

NORTH DAKOTA OPEN MEETINGS MANUAL



Office of Attorney General

Introduction

The North Dakota Attorney General's office has prepared this manual as a review of existing case law, state statutes, Attorney General Opinions, and administrative rules regarding open records and meetings. It includes annotated lists of these authorities, which are intended to be as complete as possible but should not be considered exhaustive. The analysis in this manual summarizes current law and is not an Attorney General opinion.

Prepared by

The State and Local Government Division
Office of Attorney General

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General Open Meetings Law Requirements

1. What Does the Open Meetings Law Require?

Similar open meetings provisions are found in both the North Dakota Constitution and the North Dakota Century Code:

Unless otherwise provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public.

N.D. Const. art. XI, § 5.¹

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. . . .

1. This section is violated when any person is denied access to a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the person or persons seeking access.
2. For purposes of this section, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting.
3. The right of a person to attend a meeting under this section includes the right to photograph, to record on audio or video tape and to broadcast live on radio or television the portion of the meeting that is not held in executive session, provided that there is no active interference with the conduct of the meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.
4. For meetings subject to this section where one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified in the notice issued under section 44-04-20.

N.D.C.C. § 44-04-19.²

¹ This section was approved by the citizens of North Dakota in 1974 and became effective July 1, 1975. See 1975 N.D. Sess. Laws ch. 604.

² This section was first adopted in 1957 and amended in 1977 and 1997. See 1957 N.D. Sess. Laws ch. 306; 1977 N.D. Sess. Laws ch. 417; 1997 N.D. Sess. Laws ch. 381, § 13. The 1997 amendments explain terminology and add provisions regarding recording of meetings and holding meetings by telephone or video conference.

These provisions contain similar language to the open records provisions and serve the same important public purpose. Therefore, the open meetings law should also be construed liberally in favor of the public's access to information.

2. Who Is Subject to the Open Meetings Law?

North Dakota's open meetings law applies to meetings of a "public entity," which is defined to include three categories of entities:

- a. Public or governmental bodies, boards, bureaus, commissions or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution,³ to exercise public authority or perform a governmental function;
- b. Public or governmental bodies, boards, bureaus, commissions or agencies of any political subdivision⁴ of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
- c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.⁵

N.D.C.C. § 44-04-17.1(12). An entity is subject to the open meetings law if it falls into any one of these three categories.

a. Nongovernmental Organizations

The fact that an organization is a corporation or other business entity rather than a governmental entity does not necessarily mean that the organization is excluded from the definition of "public entity" for purposes of the open meetings law. Based on the

³ "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution." N.D.C.C. § 44-04-17.1(16).

⁴ "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit." N.D.C.C. § 44-04-17.1(10).

⁵ "Public funds" means "cash and other assets with more than minimal value received from the state or any political subdivision of the state." N.D.C.C. § 44-04-17.1(13). See also N.D.A.G. 98-O-24 (Nov. 23 to Garrylle Stewart and Vern Bennett); N.D.A.G. 98-O-23 (Nov. 9 to Howard Swanson).

definitions of certain terms used in the open meetings law, there are four circumstances in which the meetings of a nongovernmental organization may be open to the public.⁶ First, the organization may be created or recognized by state law or by an action of a political subdivision to exercise public authority or perform a governmental function.⁷ As used in N.D.C.C. § 44-04-17.1(12)(b), the terms "resolution, ordinance, rule, [or] bylaw" refer to enactments by the official or group responsible for making binding legislative or policy decisions on behalf of the political subdivision.⁸ An executive order of the Governor or chief executive authority of a political subdivision also may create or recognize an organization as a "public entity."

Second, an organization may be a "public entity" if the organization is supported by public funds or is expending public funds.⁹ A nongovernmental organization is expending public funds if it receives and uses a direct appropriation from a governmental entity¹⁰ or if it manages a pool of public funds on behalf of one or more public entities.¹¹ An organization is "supported in whole or in part by public funds" if the organization receives public funds that exceed the fair market value of any goods or services given in exchange for the funds.¹² The manner of payment is not important, and can include grants, membership dues, or fees. However, an organization receiving public funds under a contract with a public entity is not supported by those funds as long as the funds were paid in exchange for goods or services that are reasonably identified in the agreement and have an equivalent fair market value, which may include a commercially reasonable amount of profit for the contractor.¹³ A payment under a vague and indistinct contract for unspecified goods or services is considered "support."¹⁴ The key question is whether public funds are being used to support an organization, or merely to purchase goods or services.¹⁵

If an organization receives public funds under an authorized economic development program, the exchange is conclusively presumed to be for fair market value rather than "support" and the organization is therefore not a public entity as a result of receiving the

⁶ N.D.A.G. 99-O-03 (Apr. 7 to Murray Sagsveen); N.D.A.G. 99-O-02 (Apr. 5 to Steve Spilde); N.D.A.G. 98-O-23 (Nov. 9 to Howard Swanson); N.D.A.G. 98-O-21 (Sept. 22 to Wes Tossett and Gary Puppe).

⁷ N.D.C.C. § 44-04-17.1(12)(a), (b).

⁸ N.D.A.G. 97-O-02 (Dec. 22 to Melvin Fischer and Lowell Jensen). One example would be a resolution of a governing body of a political subdivision authorizing a joint enterprise between the political subdivision and the corporation. N.D.A.G. 98-O-23 (Nov. 9 to Howard Swanson).

⁹ N.D.C.C. § 44-04-17.1(9).

¹⁰ N.D.A.G. 96-F-18 (Sept. 13 to Gerald Sveen).

¹¹ N.D.A.G. 99-O-02 (Apr. 5 to Steve Spilde).

¹² N.D.C.C. § 44-04-17.1(9).

¹³ N.D.A.G. 99-O-03 (Apr. 7 to Murray Sagsveen); N.D.A.G. 98-F-19 (June 10 to Carol Olson).

¹⁴ N.D.A.G. 2001-O-11 (Sept. 13 to Greg Selbo); N.D.A.G. 2001-O-10 (Sept. 7 to Robert Lamont and Nevin Van de Streek).

¹⁵ N.D.A.G. 2003-O-02 (Feb. 21 to James River Senior Citizen's Center) (a nongovernmental organization that receives mill levy money for its general support without a specific contract with the county for specific services to be provided in exchange for the mill levy money and had discretion in using mill levy money was a public entity).

funds.¹⁶ However, this presumption is limited to grants to new employers or businesses for their general operations.¹⁷

Third, even if an organization is paid fair market value for the services it provides, the organization may be considered an agent or agency of a public entity if the organization performs a governmental function or possesses records regarding public business on behalf of a public entity.¹⁸ Examples of "agencies of government" include personnel firms, an advertising company hired to perform an educational campaign on behalf of a city,¹⁹ and a local economic development corporation.²⁰

Public entities cannot avoid the requirements of the open meetings law by forming joint enterprises and transferring funds to that enterprise.²¹ Thus, a joint enterprise of several public entities to carry out the public business of those entities is an "agency" of those entities and is therefore a "public entity," even if the enterprise is formed as a separate corporation.²²

Nine non-exclusive factors may be used to help determine whether a contractor is simply providing services to a public entity or is acting in place of or on behalf of the entity: 1) the level of public funding; 2) commingling of funds; 3) whether the activity was conducted on publicly owned property; 4) whether services contracted for are an integral part of the public agency's chosen decision-making process; 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; 6) the extent of the public agency's involvement with, regulation of, or control over the private entity; 7) whether the private entity was created by the public agency; 8) whether the public agency has a substantial financial interest in the private entity; and 9) for whose benefit the private entity is functioning.²³

Finally, a group composed of the directors or officers of an organization may be a "governing body," and be required to keep its meetings regarding public business open to the public, if the group has been delegated authority from another governing body, such as a county commission or city council. This possibility is addressed later in this manual in the section regarding governing bodies.

¹⁶ N.D.C.C. § 44-04-17.1(9); N.D.A.G. 98-O-23 (Nov. 9 to Howard Swanson) (CDBG funds).

¹⁷ N.D.A.G. 2001-O-10 (Sept. 7 to Robert Lamont and Nevin Van de Streek).

¹⁸ N.D.C.C. § 44-04-17.1(12), (15). See also *Forum Publishing Co. v. City of Fargo*, 391 N.W.2d 169 (N.D. 1986).

¹⁹ N.D.A.G. 2001-O-04 (May 16 to Laurel Forsberg).

²⁰ N.D.A.G. 2001-O-11 (Sept. 13 to Greg Selbo); N.D.A.G. 2001-O-10 (Sept. 7 to Robert Lamont and Nevin Van de Streek).

²¹ N.D.A.G. 99-O-02 (Apr. 5 to Steve Spilde).

²² N.D.A.G. 99-O-02 (North Dakota Insurance Reserve Fund); N.D.A.G. 98-O-21 (Sept. 22 to Wes Tossett and Gary Puppe) (Association of Soil Conservation Districts); N.D.A.G. 98-O-04 (Mar. 3 to Norbert Sickler and Franklin Appledorn) (Southwest Multi-County Correction Center).

²³ N.D.A.G. 2001-O-11 (Sept. 13 to Greg Selbo)

3. Courts

The open meetings law does not apply to the judicial branch of government.²⁴ Therefore, deliberations of the North Dakota Supreme Court are not meetings of a governing body and committees created by the Supreme Court are not subject to the open meetings law.²⁵

The state constitution provides that court proceedings open to the public.²⁶ The court expressed a "policy of openness in judicial proceedings."²⁷ However, this policy is frequently limited by statutes providing that certain court proceedings are not open to the public. Preliminary hearings may be closed upon the request of the defendant "upon a showing that evidence inadmissible at trial will be offered at the preliminary examination and as a result there is a substantial likelihood of interference with the defendant's right to a fair trial."²⁸ Juvenile court hearings are generally closed, but must be open if the purpose of the hearing is to consider a petition alleging certain conduct for which the juvenile may be transferred to district court for criminal prosecution.²⁹ All adoption hearings are closed proceedings.³⁰ Hearings in actions to determine parentage may be closed by the court.³¹ Grand jury sessions are not open to the public.³² Hearings regarding the incapacity of a person and the need for a guardian may be closed,³³ and unnecessary persons must be excluded from involuntary treatment hearings.³⁴ Preliminary hearings and commitment proceedings of sexually dangerous individuals are open to the public.³⁵

4. What Gatherings Are Covered by the Open Meetings Law?

As used in the open meetings law,

- a. "Meeting" means a formal or informal gathering, whether in person or through electronic means such as telephone or video conference, of:
 - (1) A quorum of the members of the governing body of a public entity regarding public business; or

²⁴ N.D.A.G. 2005-O-19 (Nov. 22 to Supreme Court Gender Fairness Implementation Committee). See also Grand Forks Herald v. Lyons, 101 N.W.2d 543, 546 (N.D. 1960).

²⁵ N.D.A.G. 2005-O-19 (Nov. 22 to Supreme Court Gender Fairness Implementation Committee).

²⁶ N.D. Const. art. I, § 9.

²⁷ Dickinson Newspapers, Inc. v. Jorgensen, 338 N.W.2d 72, 79 (N.D. 1983).

²⁸ Minot Daily News v. Holum, 380 N.W.2d 347, 349 (N.D. 1986) (exercise of discretion under N.D.C.C. § 29-07-14).

²⁹ N.D.C.C. § 27-20-24(5).

³⁰ N.D.C.C. § 14-15-16(3).

³¹ N.D.C.C. § 14-20-54.

³² N.D.C.C. § 29-10.1-28.

³³ N.D.C.C. § 30.1-28-03.

³⁴ N.D.C.C. § 25-03.1-19. See also N.D.C.C. § 47-25.1-05 (preserving secrecy of trade secret).

³⁵ N.D.C.C. § 25-03.3-03.

- (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" includes work sessions,³⁶ but does not include chance or social gatherings where public business is not considered and does not include the attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.
- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.³⁷

N.D.C.C. § 44-04-17.1(8). As this definition indicates, whether a gathering of a group of persons is a "meeting" depends in part on the number of persons attending (quorum) and the topics of discussion (public business), although the form of the gathering is generally irrelevant. Traditionally, video conference and conference call are the most common means to hold a meeting when members of a governing body cannot physically be present. However, these are only examples of means by which a meeting may take place. In 2005, the phrase "other means" was replaced by "electronic means" in an effort to bring awareness to evolving technology that creates new ways for a governing body to have simultaneous discussion through electronic means. Governing bodies should be aware that simultaneous discussion by a quorum may be determined to be a meeting. Also important is whether the persons attending the gathering are members of a "governing body," which will be discussed later in this manual. Whether a gathering is a "meeting" is a question of fact, but the letter and spirit of the law prohibit officials from contriving subterfuges to evade the requirements of the open meetings law.³⁸ Any doubt whether a gathering is a meeting should be resolved by complying with the open meetings law.

a. Gatherings

A governing body does not have to transact business for a gathering to be a meeting.³⁹ Rather, the public's right to observe and monitor the performance of governmental

³⁶ A school board retreat is a meeting. N.D.A.G. 2001-O-05 (June 7 to D. Guy McDonald); N.D.A.G. 2004-O-02 (risk management training session pertained to public business and was a meeting).

³⁷ Article IV, Section 14 of the North Dakota Constitution provides: "All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, must be open and public."

³⁸ N.D.C.C. § 44-04-17.1(8); Letter from Attorney General Allen Olson to Myron Atkinson (Mar. 5, 1976). See Peters v. Bowman Public School District, 231 N.W.2d 817 (N.D. 1975).

³⁹ N.D.A.G. 2001-O-07 (Aug. 6 to Steven McCullough); N.D.A.G. 98-O-16 (July 2 to Jeff Schneider); N.D.A.G. 98-F-16 (June 8 to Dan Gaustad).

functions through attendance at public meetings applies to all stages of the decision-making process, from gathering information to deliberating to making a final decision.⁴⁰ Thus, a gathering of the members of a governing body of a public entity to discuss or receive information regarding the business of the public entity is a "meeting," even if the members merely listen and do not interact or participate in the discussion. The presence of public employees or the members of a governing body in the audience of a gathering of another entity generally does not make the entity holding the gathering subject to the open meetings law,⁴¹ but the members' presence may constitute a separate meeting of the governing body.⁴² It makes no difference under the definition of "meeting" whether the members of a governing body meet in person or by telephone; both are meetings.

Not every gathering of the members of a governing body is a "meeting."

[I]t is appropriate for a member who was absent from a meeting to contact the other members, if the conversations are limited to finding out what happened at the meeting. . . . Similarly, it would be appropriate for the presiding officer of a governing body to contact the other members to determine which items to include on the agenda of the next meeting, as long as the conversations do not include information-gathering or discussion regarding the substance of the issues on the agenda. It is only when those meetings become steps in the decision-making process (information gathering, discussion, formulating or narrowing of options, or action) regarding public business that the open meetings law is triggered.⁴³

The term "gathering" also does not include a series of written communications between the members of a governing body.⁴⁴ The open meetings law describes how a public entity must conduct its meetings, but does not establish meetings as the exclusive method for a public entity to conduct business.⁴⁵ Due to technology, there are many new ways members of a governing body may communicate. Simultaneous communication between a quorum of a governing body, through instant messaging, e-mail, or other technology, may be considered a meeting subject to the open meeting law.

b. Quorum

For a gathering to be a part of the decision-making process, and the public to be entitled to access, the gathering must involve a sufficient number of members of a governing body to take some official action or perform some step in the process, even if no action

⁴⁰ See N.D.C.C. §§ 44-04-17.1(8)(a) ("regarding" public business), 44-04-17.1(11) ("all matters that relate to" public business).

⁴¹ Letter from Attorney General Nicholas Spaeth to Wayne Jones (Jan. 28, 1985).

⁴² N.D.A.G. 98-O-18 (Aug. 11 to Marvin Gillig *et al*); N.D.A.G. 98-O-10 (May 7 to R. James Maxson *et al*).

⁴³ N.D.A.G. 98-O-05 (Mar. 3 to Paul Ebeltoft).

⁴⁴ *Id.* at 98-O-05 n.8.

⁴⁵ N.D.A.G. 2001-O-14 (Oct. 4 to Steven McCullough).

is taken at a particular gathering. Thus, to be a "meeting," the gathering must be attended by a quorum of a governing body,⁴⁶ or a quorum must be involved in a series of smaller gatherings intended to avoid the requirements of the open meetings law.⁴⁷ "Quorum" means "one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity."⁴⁸ By adopting the quorum rule, the Legislature impliedly exempted from the open meetings law most conversations between less than a quorum of the members of a governing body.⁴⁹ As a result, a meeting involving a single member of a governing body is generally not a meeting of that governing body.⁵⁰

c. Public Business

Because a gathering must pertain to "public business" to fall within the definition of "meeting," the purpose of a gathering must be considered, and not every gathering will constitute a "meeting." For example, a social or chance gathering where public business is not considered is not a "meeting."⁵¹ Public business means "all matters that relate or may foreseeably relate in any way to . . . [t]he performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or . . . [t]he public entity's use of public funds."⁵² Thus, meetings of a nongovernmental organization that is a "public entity" because it is supported by or expending public funds, but is not otherwise performing a governmental function, are open only to the extent the meetings pertain to how public funds are being or have been spent.⁵³

5. What Is a Governing Body?

a. Chief Decision-Making Body

The open meetings law has never applied to all meetings of two or more public employees. The public's right to know how government decisions are made and public funds are spent does not require access to a meeting of a "group" that is not authorized to perform some stage in a public entity's decision-making process. Instead, the term "meeting" is limited to gatherings of a "governing body" of a public entity.⁵⁴

⁴⁶ See generally N.D.A.G. 2001-O-18 (Dec. 27 to Mary O'Donnell) (pre-meeting discussion involving less than a quorum is not a meeting); N.D.A.G. 2001-O-03 (May 3 to Paul Koehmstedt) (same).

⁴⁷ N.D.C.C. § 44-04-17.1(8). For example, a planned series of investigations of the site of a complaint by the members of a governing body is a meeting. N.D.A.G. 98-F-16 (June 8 to Dan Gaustad).

⁴⁸ N.D.C.C. § 44-04-17.1(14). See N.D.A.G. 2003-O-05 (Apr. 11 to Glen Ullin City Council) (the mayor of a city council is to be counted as a member of the governing body in determining whether a quorum is present so as to conduct business); N.D.A.G. 98-O-05 (Mar. 3 to Paul Ebeltoft) (a quorum of an eight-member board is four members).

⁴⁹ N.D.A.G. 98-O-05 (Mar. 3 to Paul Ebeltoft).

⁵⁰ N.D.A.G. 2005-O-14 (April 29 to Mary Ekstrom)

⁵¹ N.D.C.C. § 44-04-17.1(8)(b).

⁵² N.D.C.C. § 44-04-17.1(11).

⁵³ N.D.A.G. 2004-O-04 (Jan. 22 to Les O. Urvand).

⁵⁴ N.D.C.C. § 44-04-17.1(8).

"Governing body" includes "the multimember body responsible for making a collective decision on behalf of a public entity."⁵⁵ This definition preserves the public's right to view the process leading up to government decision-making, but does not extend the open meetings, notice, voting and minutes laws to conversations between public officials or employees that are not part of the decision-making process.

Because the definition of "meeting" requires a governing body consisting of more than one decision-maker authorized to act on behalf of a public entity, the open meetings law does not apply to public entities governed by a single individual rather than a group.⁵⁶ Similarly, a group of department heads or other employees of a public entity is not a governing body unless the group is a separate public entity under the open meetings law or, as discussed in the next paragraph, is acting pursuant to authority delegated by a governing body.

b. Committees or Other Groups

If the open meetings law applied only to the chief decision-making body of a public entity, the body could avoid compliance with the open meetings law simply by delegating authority to a committee or other group. To allow the requirements of the open meetings law to be so easily circumvented would effectively render those requirements meaningless.⁵⁷ Therefore, the 1997 amendments to the open meetings law further define "governing body" to include "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body."⁵⁸

This definition follows the delegation of authority from one governing body to another. For example, a school district board may ask a "committee" of its members or other persons to interview applicants for open positions in the school district and recommend three applicants for each position. The committee would be a "governing body" as a result of the authority it received from the board as governing body of the school district. If the committee asked a group of faculty members to collectively review all applications for teaching positions to determine which applicants would be interviewed by the committee, the group of faculty members also would be a "governing body" because of the authority delegated to the group by the committee. However, a group is not a "governing body" if the delegation of authority comes from a single individual rather than

⁵⁵ N.D.C.C. § 44-04-17.1(6).

⁵⁶ N.D.A.G. 98-F-12 (May 7 to Bill Oban).

⁵⁷ Thus, under prior law, a group that was not directly subject to the open meetings law, such as a committee, could become subject to the open meetings law indirectly if the group, through the exercise of functions that have been delegated to it by the public entity, "assume[d] the color of a public body because of the delegation of such authority." N.D.A.G. 96-F-09 (Apr. 4 to Fabian Noack); N.D.A.G. 67-244 (Jan. 4, 1967, to Kenneth Raschke). For example, the Supreme Court held that the open meetings law applies to school board committees negotiating teacher contracts. Dickinson Education Association v. Dickinson Public School District No. 1, 252 N.W.2d 205, 212 (N.D. 1977).

⁵⁸ N.D.C.C. § 44-04-17.1(6). N.D.A.G. 2003-O-05 (Apr. 11 to Glen Ullin City Council) (gathering of three members of a seven member board would have been a meeting if the members were acting pursuant to authority delegated to them by the city council).

a group,⁵⁹ unless the group is a task force or working group.⁶⁰ Also, a delegation to a "governing body" does not occur if the delegation is to one person.⁶¹

It is important to note the definition of "governing body" does not require that the group be authorized to take final action on an item of public business. Rather, the group need only be authorized by the governing body to take some action, including information gathering or holding discussions, for the group to be a "governing body" by delegation.

Any doubt whether a committee or other group is subject to the open meetings law should be resolved in favor of opening meetings of the group to the public. "[M]eetings of groups connected with public agencies or institutions or groups assuming quasi public functions should, as a matter of policy, be open to the public except in the most unusual of circumstances."⁶²

6. Who Has the Right to Attend Open Meetings?

Every person has a right to attend any open meeting, regardless of the person's interest in the meeting. In the analogous situation of open court proceedings, the Supreme Court has stated that "[t]he news media does not occupy a special status distinct from that of the general public. . . . The news media's right to be present stems from being a member of the public and, as such, it may freely report whatever occurs in open court, not as a special privilege, but as a member of the public."⁶³ The purpose of the open meetings law is to give members of the public access to the meetings of a governing board of a public entity but that access does not give members of the public the right to participate or speak at the public meeting.⁶⁴

7. How Is the Open Meetings Law Enforced?

a. Administrative Review

Any interested person may request an Attorney General's opinion to review an alleged violation of the open meetings law, the procedures for conducting an executive session, the law requiring notice of meetings, or the law regarding open voting and minutes by any public entity other than the Legislative Assembly or any committee thereof.⁶⁵

A request made under this section must be made within thirty days of the alleged violation, except that a request based on allegations that a

⁵⁹ N.D.A.G. 97-O-02 (Dec. 22 to Melvin Fischer and Lowell Jensen).

⁶⁰ N.D.C.C. § 44-04-17.1(16).

⁶¹ N.D.C.C. § 44-04-17.1(6) (a delegation must be to a group of persons); N.D.A.G. 2005-L-14 (April 29 to Mary Eckstrom); N.D.A.G. 2004-O-12 (June 16 to Medora City Council).

⁶² N.D.A.G. 67-244 (Jan. 4, 1967, to Kenneth Raschke).

⁶³ Dickinson Newspapers, Inc. v. Jorgensen, 338 N.W.2d 72, 79 (N.D. 1983).

⁶⁴ N.D.A.G. 2003-O-07 (June 5 to Kindred School District No. 2); N.D.A.G. 99-O-07 (June 29 to Board of Examiners on Audiology and Speech-Language Pathology); N.D.A.G. 98-F-11 (Apr. 30 to Dickey County State's Attorney).

⁶⁵ N.D.C.C. § 44-04-21.1(1).

meeting occurred without notice required by section 44-04-20, must be made within ninety days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.2. The attorney general may request and obtain information claimed to be exempt or confidential for the purpose of determining whether the information is exempt or confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. The attorney general shall issue to the public entity involved an opinion on the alleged violation unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. If the request pertains to a [nongovernmental organization], the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.

N.D.C.C. § 44-04-21.1(1).

If the Attorney General's opinion concludes that a violation has occurred, the public entity has seven days to comply with the opinion and take corrective action, regardless of whether a civil action is filed under section 44-04-21.2. If the public entity fails to do so, and the person requesting the opinion prevails in a civil action brought under section 44-04-21.2, the person must be awarded attorneys' fees and costs for the trial and any appeal. "The consequences for failing to comply with an attorney general's opinion issued under this section will be the same as for other attorney general's opinions, including potential personal liability for the person or persons responsible for the noncompliance."⁶⁶ A state-level public entity that does not comply in full with the Attorney General's opinion is responsible for obtaining separate legal counsel, at its own expense, and the attorney must obtain an appointment as a special assistant attorney general under N.D.C.C. § 54-12-08.1.⁶⁷

b. Civil Action

In 1997, the Legislative Assembly authorized a civil action by any interested person against a public entity for an alleged violation of the open meetings law, the procedures for conducting an executive session, the law requiring notice of meetings, or the law regarding open voting and minutes.⁶⁸ The action must be commenced within 60 days of the date the person knew or should have known of the violation or within 30 days of issuance of an Attorney General's opinion on the alleged violation, whichever is later. The action must be commenced in the county where the entity has its principal office or in Burleigh County for entities that do not have a principal office within the state.

⁶⁶ N.D.C.C. § 44-04-21.1(2).

⁶⁷ N.D.C.C. § 44-04-21.1(3).

⁶⁸ N.D.C.C. § 44-04-21.2(1).

"If a court finds that any of these sections have been violated by a public entity, the court may award declaratory relief, an injunction, a writ of prohibition or mandamus, costs, disbursements, and reasonable attorney's fees against the entity."⁶⁹ Damages may be assessed in the amount of \$1,000 or actual damages, whichever is greater, for an intentional or knowing violation of these laws. The court can also void any action that is a product of an illegal meeting.⁷⁰

This section does not authorize a civil action if the violation has been cured before the action is filed and no person has been harmed by the delay.⁷¹ Furthermore, a public entity may not be sued for attorneys' fees or damages, or both, until at least three working days after the chief administrative officer for the public entity receives notice and opportunity to cure the alleged violation. This opportunity to cure a violation does not apply if the public entity has previously been found by the Attorney General to have violated the open records or meetings laws.⁷²

c. Criminal Violations

Under legislation enacted in 2001, a public servant who knowingly violates the open records and meetings laws is guilty of a class A misdemeanor.⁷³

8. Examples of Meetings Generally Open to the Public

- a. Sessions of the Legislative Assembly, including committee meetings.⁷⁴
- b. Meetings of a board of county commissioners.⁷⁵
- c. Most school board meetings.
- d. Meetings of a city governing body.⁷⁶
- e. Meetings of a governing body of a public entity to conduct personnel interviews.⁷⁷
- f. Informal consultations between a quorum of a governing body and its attorney unless exempt from the open meetings law under N.D.C.C. § 44-04-19.1 as attorney consultation.
- g. Meetings of licensing and professional boards.

⁶⁹ Id.

⁷⁰ N.D.C.C. § 44-04-21.2(2).

⁷¹ N.D.C.C. § 44-04-21.2(3).

⁷² Id.

⁷³ N.D.C.C. §§ 44-04-21.3, 12.1-11-06.

⁷⁴ N.D. Const. art. IV, § 14; N.D.C.C. § 44-04-17.1(8)(c). However, "[a] caucus of members of either house or the legislative assembly may meet in an executive session that is not subject to section 44-04-19 if the meeting is not held on public property." N.D.C.C. § 44-04-19.3.

⁷⁵ N.D.C.C. § 11-11-06.

⁷⁶ N.D.C.C. § 40-06-02.

⁷⁷ Letter from Attorney General Nicholas Spaeth to Sparb Collins (Aug. 10, 1989).

Exemptions From the Open Meetings Law

Meetings of an entity subject to the open meetings law are presumptively open to the public. However, because the open meetings law does not apply if "otherwise specifically provided by law," a meeting of a governing body of a public entity need not be open if it falls within a specific exemption from the open meetings law or if a confidential meeting is required. Interpreting identical language in the open records law, the North Dakota Supreme Court has held that a "specific" exemption may not be implied.⁷⁸ Therefore, an exemption from the open meetings law must also be firmly grounded in law rather than an implied, vague, or arguable exemption.

1. Sources of Exemptions

Exemptions from the open meetings law must be "specifically provided by law." "Law" includes "federal statutes, applicable federal regulations, and state statutes."⁷⁹ Exemptions from the open records law may be the largest source of exemptions from the open meetings law. If a public entity has exercised its discretion not to disclose to the public records that are exempt from the open records law, or if records are confidential, the portions of a meeting during which those records are discussed may be held in executive session.⁸⁰ To conclude otherwise would defeat the purpose of the statute making a record confidential or exempt. However, a person who is entitled to have access to closed or confidential records may not be excluded from an executive session which is held to discuss those records.⁸¹

The application of a statute making certain meetings confidential or exempt, or making records discussed during a meeting confidential or exempt, may be waived by the party or parties for whose benefit the statute was passed.⁸²

2. Types of Exemptions

Whether a meeting is open, exempt, or confidential may depend on the records to be discussed during the meeting. Therefore, the open meetings law has the same type of exemptions as the open records law. In addition, a distinction can be drawn between meetings that must be open under the open meetings law, meetings that are confidential and must not be open to the public, and meetings for which public access is neither required nor prohibited. Whether public access is prohibited or merely not required will depend on the terms of the law authorizing the meeting to be closed. The term "executive session" refers to both confidential meetings and exempt meetings which have not been opened and are therefore closed.⁸³

⁷⁸ *Hovet v. Hebron Public School District*, 419 N.W.2d 189, 192 (N.D. 1988).

⁷⁹ N.D.C.C. § 44-04-17.1(7). See also *Dickinson Newspapers Inc. v. Jorgensen*, 338 N.W.2d 72, 75 (N.D. 1983) (court rules).

⁸⁰ N.D.C.C. § 44-04-19.2(1).

⁸¹ N.D.A.G. 2000-O-02 (Jan. 31 to Dan Fremling and Tom Tupa).

⁸² See N.D.A.G. 99-L-30 (Apr. 5 to Wade Enget).

⁸³ N.D.C.C. § 44-04-17.1(4).

a. Confidential Meetings

"Confidential meeting" means "all or part of a . . . meeting that is either expressly declared confidential or is prohibited from being open to the public."⁸⁴ Under this definition, a meeting may be required to be confidential or closed to the public in two ways. First, a statute may require that a meeting be closed or prohibit a meeting from being open. Second, the entity may be considering records that are confidential or otherwise prohibited from disclosure. In either case, confidential meetings are characterized by a lack of discretion to open the meeting to the public.⁸⁵ Disclosing confidential information to the public is generally punishable as a class C felony.⁸⁶

b. Exempt Meetings

Questions regarding the open meetings law are generally discussed in terms of the public's right of access to meetings. Rarely discussed is an agency's discretion to voluntarily allow public access to meetings that are not confidential but are exempt from the open meetings law. In this context, "exempt meeting" means "all or part of a . . . meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity."⁸⁷ These exemptions frequently provide that meetings "may be closed" or "are not subject to the open meetings law." Similarly, if records will be discussed at a public entity's meeting that are exempt from the open records law and have not been voluntarily disclosed by the public entity, the meeting is exempt from the open meetings law and may be closed. If a public entity exercises its discretion not to allow public access to the exempt portion of a meeting, that meeting is defined as a "closed meeting," although "any person necessary to carry out or further the purposes of a closed meeting may be admitted."⁸⁸

3. Limits on Exemptions

In addition to the requirement that exemptions be specifically provided by law, there may be several other limits on exemptions from the open meetings law.

a. Temporary Exemptions

Some exemptions from the open meetings law may be considered temporary because the record of the meeting must later be open to the public. For example, the records of an administrative investigation of a complaint concerning a school district employee are confidential until the investigation is completed, which must occur within sixty days after the complaint is filed.⁸⁹

⁸⁴ N.D.C.C. § 44-04-17.1(3).

⁸⁵ N.D.A.G. 94-F-28 (Sept. 2 to Bill Oban).

⁸⁶ N.D.C.C. § 12.1-13-01.

⁸⁷ N.D.C.C. § 44-04-17.1(5).

⁸⁸ N.D.C.C. § 44-04-17.1(1).

⁸⁹ N.D.C.C. § 15.1-07-25(2).

b. Open to Certain People

Some exemptions indicate that certain people are allowed to attend a meeting which is otherwise not open to the public. For example, during a school board executive session to consider the nonrenewal or termination of a teacher's contract, both the teacher and the board are allowed to choose certain people to attend the hearing.⁹⁰ In general, the fact an exempt meeting is closed does not preclude the attendance of any person the governing body reasonably believes needs to be present to carry out or further the purpose of the meeting.⁹¹ Each member of the governing body has an inherent right to attend an executive session of that body, unless the subject of the executive session is litigation involving that member.⁹²

c. Closed Only for Specific Purposes

Whether a meeting is exempt from the open meetings law may depend on the subject to be discussed. For example, hearings may be closed if the appointment or renewal of a college president is being considered, but not for general consideration of the president's performance.⁹³

4. How Do I Conduct an Executive Session?

Only the portions of a public meeting that are specifically confidential or exempt from the open meetings law, or during which confidential or exempt records are discussed, may be closed to the public and held in executive session.⁹⁴ The remainder of the meeting must be open to the public.⁹⁵

Although certain statutes may apply to particular meetings or entities, state law specifies the following general procedure for holding an executive session.⁹⁶

1. Convene in an open session preceded by public notice;
2. Pass a motion to hold an executive session, unless a motion is unnecessary because a confidential meeting is required;⁹⁷
3. Announce during the open portion of the meeting the topics to be considered during the executive session and the legal authority for holding an executive session on those topics;⁹⁸

⁹⁰ N.D.C.C. § 15.1-15-06.

⁹¹ N.D.C.C. § 44-04-17.1(1), N.D.A.G. 2002-O-10 (Oct. 18 to McKenzie School Board).

⁹² N.D.A.G. 1999-L-115 (Nov. 18 to Howard Swanson).

⁹³ N.D.C.C. § 15-10-17(1); N.D.A.G. 81-41 (Apr. 15 to Kent Alm).

⁹⁴ N.D.C.C. §§ 44-04-17.1(4); 44-04-19.2(1).

⁹⁵ N.D.C.C. § 44-04-19.2(3).

⁹⁶ N.D.C.C. § 44-04-19.2(2).

⁹⁷ A motion to hold an executive session is a nonprocedural vote that must be taken by a recorded roll call vote. N.D.C.C. § 44-04-21; N.D.A.G. 2001-O-17 (Dec. 24 to Ronald Reichert).

⁹⁸ The announcement need not reveal closed or confidential information or cite the number of the specific statute authorizing the executive session, as long as the motion identifies the appropriate statutory basis

4. Record the executive session electronically or on audio or video tape;
5. Limit the topics considered during the executive session to the announced, authorized topics; and
6. Take final action⁹⁹ on the topics considered in the executive session during the open portion of a meeting.¹⁰⁰

Under these provisions, a governing body's authority to hold an executive session may be invoked only during a properly noticed open meeting, and not during a separate meeting for which public notice is not provided.¹⁰¹ To close a portion of the meeting, the governing body may either excuse the public or reconvene in another location.

Under N.D.C.C. § 44-04-19.2(2), a vote to go into executive session is not necessary if a confidential meeting is required or if the governing body is closing the meeting to discuss confidential records. However, because a discussion of exempt records does not necessarily have to occur in an executive session, a vote is necessary to determine whether the discussion will occur in an open meeting or in an executive session.¹⁰²

The recording of an executive session may be disclosed upon a majority vote of the governing body, unless the executive session was required to be confidential.¹⁰³ The recording must be disclosed pursuant to court order or to the Attorney General for the purpose of administrative review. The Attorney General must return the recording to the governing body upon completion of the administrative review without disclosing the recording to the public. Unauthorized disclosure of the recording by a public servant is a violation of N.D.C.C. § 12.1-13-01. The recording and any minutes of an executive session remain closed even if the underlying statutory basis for the executive session no longer applies.¹⁰⁴ The recording must be maintained by the public entity for a minimum of six months after the executive session.¹⁰⁵

for closing the meeting. N.D.A.G. 99-O-04 (Apr. 22 to Gregory Lange). For closed attorney consultations, a governing body is not always required to identify the specific litigation or administrative proceeding, as long as other information is provided about the topics to be considered during the executive session. N.D.A.G. 2000-O-10 (July 19 to Howard Swanson). See N.D.A.G. 2002-O-01 (Jan. 10 to Wade Enget) (announcement indicating N.D.C.C. § 44-04-19.1 was insufficient); N.D.A.G. 2001-O-17 (Dec. 24 to Ronald Reichert) (announcement of "wage negotiation strategy"); N.D.A.G. 2001-O-15 (Nov. 5 to Mary O'Donnell) (announcement of attorney consultation for reasonably predictable lawsuit).

⁹⁹ "Final action" means "a collective decision or a collective commitment or promise to make a decision on any matter, including formation of a position or policy, but does not include guidance given by members of the governing body to legal counsel or other negotiator in a closed attorney consultation or negotiation preparation session authorized in section 44-04-19.1." N.D.C.C. § 44-04-19.2(2)(e).

¹⁰⁰ In voting to take final action following an executive session, a governing body can refer generally to the subject of the motion being voted on and is not required to reveal closed or confidential information. N.D.A.G. 2001-F-10 (Dec. 11 to Eric Hardmeyer); N.D.A.G. 2000-O-04 (Mar. 15 to Larry Gegelman).

¹⁰¹ N.D.A.G. 2000-O-03 (Jan. 31 to Duane Schurman).

¹⁰² N.D.A.G. 2000-O-02 (Jan. 31 to Dan Fremling and Tom Tupa).

¹⁰³ N.D.C.C. § 44-04-19.2(5).

¹⁰⁴ *Id.*; N.D.A.G. 98-O-25 (Nov. 24 to Douglas Schauer).

¹⁰⁵ N.D.C.C. § 44-04-19.2(5).

Although all executive sessions must be recorded, minutes of executive sessions need not be kept.

The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session.

N.D.C.C. § 44-04-19.2(4).

5. Examples of Meetings Generally Not Open to the Public

a. Meetings to Discuss Closed or Confidential Records.

The portion of a meeting during which confidential or exempt records are considered may be closed to the public.¹⁰⁶ This is particularly common for school board meetings to discuss student records.¹⁰⁷

b. Nonrenewal, Dismissal for Cause, or Suspension of Teachers, Principals, Superintendents, and Directors.

Board meetings concerning the nonrenewal, dismissal for cause, or suspension of a teacher, principal, superintendent, or directors may be closed except for certain representatives of the board and the teacher.¹⁰⁸

c. Attorney Consultation.

Frequently an executive session is held for “attorney consultation.”¹⁰⁹ The right of a public entity in North Dakota to confidentiality in its relationship with its attorney is different from the right of private citizens.¹¹⁰ For an executive session to be authorized, the mere presence of the public entity’s attorney at the meeting is not enough. The meeting must be held to receive and discuss the attorney’s advice regarding pending or reasonably predictable civil or criminal litigation or adversarial administrative proceedings.¹¹¹ The purpose of the exemption is to conceal a public entity’s attorney consultation from its adversary, rather than to prevent public access to the meeting.¹¹² A public entity does not have to be a party to a court action or administrative proceeding, as long as it has a legal interest in the action or proceeding.¹¹³ However, the exemption for attorney consultation is waived if the public entity allows its adversary to the pending or

¹⁰⁶ N.D.C.C. § 44-04-19.2(1).

¹⁰⁷ N.D.A.G. 2000-O-04 (Mar. 15 to Larry Gegelman). This exception is limited to student records and does not include all discussions regarding specific students. Id.

¹⁰⁸ N.D.C.C. §§ 15.1-14-06, 15.1-14-10, 15.1-14-16, 15.1-14-20, 15.1-14-26, 15.1-14-30, 15.1-15-02, 15.1-15-06, 15.1-15-08, 15.1-15-10.

¹⁰⁹ N.D.C.C. § 44-04-19.1(2), (4).

¹¹⁰ N.D.A.G. 2000-O-12 (Oct. 17 to Scott Solem).

¹¹¹ N.D.A.G. 2002-O-10 (Oct. 18 to McKenzie School Board)

¹¹² N.D.A.G. 2002-O-01 (Jan. 10 to Wade Enget).

¹¹³ N.D.A.G. 2000-O-12 (Oct. 17 to Scott Solem).

reasonably predictable court action or administrative proceeding to attend the executive session.¹¹⁴

The phrase “reasonably predictable” requires a realistic and tangible threat of litigation or proceedings, and not a mere fear or potential of being a party to litigation or an administrative proceeding. However, a public entity does not have to wait until the moment before a lawsuit or administrative appeal is filed before claiming that litigation or administrative proceedings are “reasonably predictable.”¹¹⁵

Adversarial administrative proceedings include administrative proceedings where the administrative agency acts as a complainant, respondent, or decision maker in an adverse administrative proceeding. An administrative agency is not limited to agencies of the state, but includes local governing bodies as well.¹¹⁶

d. Negotiation Strategy Sessions.

An executive session also may be held to discuss negotiating strategy or provide negotiating instructions regarding pending or reasonably predictable litigation, adversarial administrative proceedings, or contracts.¹¹⁷ An executive session is authorized under this exception only if holding an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity, and may not be used to perform employee evaluations.¹¹⁸ The terms “strategy” and “instructions” are key limiting terms in this subsection and do not authorize an executive session simply to receive an update on the status of negotiations.¹¹⁹

e. Economic Development.

In addition to discussing closed or confidential economic development records, an executive session is authorized to discuss a public entity’s efforts to recruit a new business to the area served by the public entity.¹²⁰

f. State Agency Loss Control Committees

State agency loss control committee meetings regarding closed records of a specific pending or reasonably predictable claim against the state or a state employee may be held in executive session.¹²¹

¹¹⁴ N.D.A.G. 2002-O-01 (Jan. 10 to Wade Enget).

¹¹⁵ N.D.A.G. 2001-O-15 (Nov. 5 to Mary O’Donnell).

¹¹⁶ Edinger v. Governing Authority of Stutsman Co. Correctional Center, 695 N.W.2d 447 (N.D. 2005).

¹¹⁷ N.D.C.C. § 44-04-19.1(7).

¹¹⁸ N.D.A.G. 2001-O-17 (Dec. 24 to Ronald Reichert); N.D.A.G. 2000-O-09 (July 17 to Ellen Elder).

¹¹⁹ N.D.A.G. 2000-O-05 (Apr. 4 to Larry Gegelman).

¹²⁰ N.D.C.C. § 44-04-18.4; N.D.A.G. 2001-O-01 (Feb. 13 to Michael Maus).

¹²¹ N.D.C.C. § 32-12.2-12.

Guidelines for Notices of Open Meetings

The Attorney General's office is providing these guidelines as directed by N.D.C.C. § 44-04-20(8).

1. What Does the Law Require?

N.D.C.C. § 44-04-20 provides:

1. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1, including executive sessions, conference call meetings, and video conferences. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.
2. The notice required in this section must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice must also contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by telephone or video conference, the location of the meeting and the place the meeting is held is the location of a speakerphone or monitor as required under section 44-04-19.
3. In cases where the governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies. This schedule must be furnished to anyone who requests the information. When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or

designee of the county for all other bodies. This subsection does not apply to meetings of the legislative assembly or any committee thereof.

5. The governing body's presiding officer has the responsibility of assuring that such public notice is given at the same time as such governing body's members are notified, and that this notice is available to anyone requesting such information. When a request is made for notice of meetings, the request is effective for one year unless a different time period is specified.
6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located. Topics that may be considered at an emergency or special meeting are limited to those included in the notice.
7. A committee of an institution under the authority of the state board of higher education, in lieu of the notice requirements in this section, may file in the office of the president of the institution the name, address, and telephone number of a person who may be contacted to obtain specific times, dates, and locations of any meetings of that committee or to request specific notification of each meeting of that committee.
8. The attorney general shall prepare general guidelines to assist public entities in following the provisions of this section.
9. This section is violated when a notice is not provided in substantial compliance with this section.

2. How and Where Must Notices of Meetings Be Provided?

Unless otherwise specifically provided by law, public notice must be given of all meetings governed by N.D.C.C. § 44-04-19, including executive sessions, conference call meetings, and video conferences.¹²² If a meeting is postponed or rescheduled, a new notice must be provided.¹²³ Notifying interested members of the public about a meeting, or announcing a meeting during the previous meeting, is not a substitute for complying with the requirements in N.D.C.C. § 44-04-20.¹²⁴

¹²² N.D.C.C. § 44-04-20.

¹²³ N.D.A.G. 98-O-09 (May 7 to Nick Zaharia).

¹²⁴ N.D.A.G. 2001-O-05 (June 7 to D. Guy McDonald); N.D.A.G. 2000-O-03 (Jan. 31 to Duane Schurman).

The notice of a meeting must be 1) posted in a conspicuous place at the governing body's main office, if one exists; 2) filed with the secretary of state for state-level bodies or nongovernmental organizations supported by or expending public funds, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other public bodies;¹²⁵ and 3) posted at the location of the meeting on the day of the meeting, if the meeting is held somewhere other than the governing body's main office. The notice must also be given to anyone requesting the information.¹²⁶ If a public entity's jurisdiction covers more than one political subdivision, it must file its notice in each county it serves.¹²⁷

A meeting held for limited purposes should be considered an emergency or special meeting. For emergency or special meetings, notice also must be given to the entity's official newspaper, if any, and any representative of the news media who requests or has requested it.¹²⁸ If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located.¹²⁹ The topics that may be considered at an emergency or special meeting are limited to those included in the notice, including any topics to be discussed in an executive session.¹³⁰

In addition to providing notice of each meeting, governing bodies are encouraged, and may be required by statute, ordinance or resolution, to set a regular schedule for their meetings. Any such schedule, including the required notice information if available, shall be filed annually in January with the secretary of state for state-level bodies or nongovernmental organizations supported by or expending public funds, the city auditor for all city-level bodies, and the county auditor for all other public bodies. A county or city may designate a person or entity other than its auditor to receive any annual schedules or meeting notices. This schedule must be furnished by that official to anyone who requests the information. A meeting notice need not be filed if all the information in the notice was previously included in a properly filed annual meeting schedule, but the notice still must be prepared and posted for each meeting.¹³¹

¹²⁵ Notice of meetings of multi-county agencies must be filed in the auditor's office of each participating county. N.D.A.G. 98-O-04 (Mar. 3 to Norbert Sickler and Franklin Appledorn).

¹²⁶ A governing body is not required by this section to provide notice to any individual unless the individual has asked for such notice. N.D.A.G. 99-O-06 (June 14 to Ed Malazdrewicz).

¹²⁷ N.D.A.G. 2005-O-10 (June 9 to Wilton Rural Ambulance District).

¹²⁸ N.D.C.C. § 44-04-20(6); N.D.A.G. 2001-O-08 (Aug. 20 to Karl Hoppe); N.D.A.G. 98-O-13 (June 11 to Edward Urness) (notice to the entity's official newspaper is required even if the newspaper did not ask for notice of special or emergency meetings). Compare Quarles v. McKenzie Public School District, 325 N.W.2d 662, 670 (N.D. 1982).

¹²⁹ N.D.C.C. § 44-04-20(6).

¹³⁰ N.D.C.C. § 44-04-20(6). See also N.D.A.G. 2000-O-03 (Jan. 31 to Duane Schurman); N.D.A.G. 2002-O-11 (Dec. 18 to Larimore City Council).

¹³¹ N.D.A.G. 98-O-11 (June 8 to Duane Mullenberg and Fabian Noack).

3. When Must Notices of Meetings Be Provided?

Notice must be provided in advance of all meetings governed by N.D.C.C. § 44-04-19.¹³² Notices should be given as early as possible, but there is no mandatory minimum notice period in N.D.C.C. § 44-04-20.¹³³ Rather, N.D.C.C. § 44-04-20 simply requires that notice be provided at the same time the governing body's members are notified of a meeting. If the attendance of a quorum of the members of a governing body at a meeting of another group is a surprise, the notice should be provided immediately.¹³⁴

4. What Must Notices Contain?

A written notice of each public meeting must be prepared containing the date, time, and location of the meeting, the general subject matter of any executive sessions expected to be held during the meeting,¹³⁵ and, if practicable, the topics to be considered or agenda.¹³⁶ Some general topics should be known at the time notice is given even if a final agenda has not yet been completed. Every item in the notice should be specified as clearly as possible. Each public entity should prepare a rough agenda of its meetings and follow that agenda as much as possible. However, the lack of an agenda or a departure from it at a regular meeting will not affect the validity of the meeting or any actions taken at the meeting.

Notice of special or emergency meetings must list each item to be discussed.¹³⁷ Discussion at the meeting is limited to those items.¹³⁸

If one or more members of the governing body are participating in the meeting by telephone or video, the location of the meeting is the place where a speakerphone or monitor is provided. The notice should also include a phone number that may be called to arrange special accommodations for a person with disabilities.

5. Must the Notice Be Published or Provided to the News Media?

Unless otherwise specified by law, meeting notices need not be published.¹³⁹ However, publication is not prohibited and is an effective way of notifying interested persons of the meeting. To follow the spirit of the open meetings law, all public bodies are encouraged to give notice of their meetings to representatives of the news media.¹⁴⁰ As discussed earlier in this manual, notice of emergency or special meetings must be given to the

¹³² N.D.C.C. § 44-04-20(1).

¹³³ N.D.A.G. 98-O-13 (June 11 to Edward Urness).

¹³⁴ N.D.A.G. 98-O-10 (May 7 to R. James Maxson *et al*); N.D.A.G. 98-O-08 (May 4 to Bob Dykshoorn).

¹³⁵ *See* N.D.A.G. 2001-O-15 (Nov. 5 to Mary O'Donnell); N.D.A.G. 2000-O-10 (July 19 to Howard Swanson) (notice must contain general description of executive session).

¹³⁶ N.D.C.C. § 44-04-20(2).

¹³⁷ N.D.A.G. 2002-O-11 (Nov. 11 to Larimore City Council)

¹³⁸ *Id.*

¹³⁹ N.D.A.G. 2002-O-12 (Dec. 18 to State Board of Higher Education)

¹⁴⁰ N.D.A.G. 81-10 (Feb. 6 to Wayne Stenehjem).

entity's official newspaper, if any, and any representative of the news media who requests or has requested it. Because some public entities are not required by law to have an official newspaper, the law was amended in 2005 to require public entities that do not have an official newspaper to give notice of special or emergency meetings to the official newspaper of the county where the public entities' principal office or mailing address is located.¹⁴¹

6. Who Is Responsible for Providing Notices?

While most public bodies have a secretary or some other executive officer who generally provides notices of public meetings, the public entity's presiding officer is responsible for assuring the required notice is given to the public.¹⁴²

7. How Is the Notice Law Violated?

The law requiring notice of all meetings of governing bodies of public entities is violated when a meeting is held for which public notice has not been provided in substantial compliance with statutory requirements.

¹⁴¹ N.D.C.C. § 44-04-20(6).

¹⁴² N.D.C.C. § 44-04-20(5); N.D.A.G. 98-O-13 (June 11 to Edward Urness).

Other Required Open Meetings Procedures

1. Location of Meetings

The location of any open meeting "must be accessible to, and the size of the room must be sufficient to accommodate, the number of persons reasonably expected to attend the meeting."¹⁴³ The open meetings law does not specifically address the proximity of the public entity's meeting place to the people affected by the entity's decisions, however, holding a meeting a substantial distance away from the public entity's jurisdiction could result in the denial of the public's access to the meeting.¹⁴⁴ The Americans with Disabilities Act of 1990 (ADA) also requires that meeting locations be readily accessible to individuals with disabilities.¹⁴⁵ A public body should contact its attorney if it has any questions regarding ADA compliance.

2. Agendas and Schedules

N.D.C.C. § 44-04-20 requires the topics to be considered, or agenda, to be included in the notice of meeting if practicable. Some general topics should be known at the time notice is given even if a final agenda has not yet been completed. However, except for emergency or special meetings, a governing body's failure to file an agenda with its notice of meeting, or departure from a stated agenda, does not affect the validity of the meeting or actions taken at that meeting.¹⁴⁶ A governing body is free to discuss any topic at a regular meeting, as long as the notice of the meeting listed all the topics the governing body expected to discuss when the notice was prepared.¹⁴⁷ If no statute, ordinance, resolution, rule or bylaw specifies other procedures, general rules of parliamentary procedure allow members, during a regular meeting, to add items to the agenda as new business.¹⁴⁸

3. Procedures Governing Meetings

One or more of the members of a governing body may hold or participate in an open meeting by telephone or video, as long as a speakerphone or monitor is provided at the location specified in the notice of the meeting.¹⁴⁹

The right of a person to attend an open meeting includes the right to photograph, record, or broadcast the portion of the meeting that is not held in executive session, as long as there is no active interference with the meeting.¹⁵⁰ Prior approval or notice to the governing body is not required, although the governing body can impose reasonable

¹⁴³ N.D.C.C. § 44-04-19(2).

¹⁴⁴ N.D.A.G. 2002-O-12 (Dec. 18 to State Board of Higher Education) (proximity of meeting place to people affected).

¹⁴⁵ 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 225, 611. See also 28 C.F.R. § 35.150; N.D.C.C. § 54-21.3-04.1; N.D.A.G. 95-L-249 (Oct. 27 to Ted Seibel).

¹⁴⁶ N.D.C.C. § 44-04-20(2); N.D.A.G. 98-O-21 (Sept. 22 to Wes Tossett and Gary Puppe).

¹⁴⁷ N.D.A.G. 99-O-08 (Sept. 9 to Cameron Sillers).

¹⁴⁸ Letter from Attorney General Nicholas Spaeth to Corliss Mushik (Apr. 25, 1990).

¹⁴⁹ N.D.C.C. § 44-04-19(4).

¹⁵⁰ N.D.C.C. § 44-04-19(3).

restrictions on the recording activity, such as a limit on the number or location of recording devices, to minimize disruption to the meeting. Although what constitutes an unreasonable disruption is a question of fact, "[t]hat members of the [governing body] may be inhibited, intimidated, or uncomfortable is not sufficient disruption to authorize the [governing body] to limit the recording of its meetings. A meeting is not unreasonably disrupted when members of the public or the media unobtrusively make audio or video recordings of the meeting while sitting in their seats or standing at the back or side of the room."¹⁵¹

The right of a person to attend an open meeting does not include the right to address the governing body during the meeting, unless a specific statute requires a public hearing.¹⁵² A meeting that cannot be heard by a member of the public is the equivalent of an executive session and is a violation of the open meetings law.¹⁵³

Unless otherwise specified by law, such as for executive sessions, the procedures to be followed during a meeting are generally left to the public entity's discretion.¹⁵⁴ If specific procedures have not been adopted by statute, ordinance, resolution, rule, or bylaw, generally accepted rules of parliamentary procedure should govern the meeting.¹⁵⁵ Robert's Rules of Order is one widely accepted authority.

4. Recorded Votes

Unless otherwise specifically provided by law, all votes of whatever kind taken at a meeting subject to the open meetings law must be open to the public.¹⁵⁶ Roll call votes indicating how each member voted must be taken and recorded for all nonprocedural votes, and for any procedural vote upon the request of any member of the governing body. A member of the public attending a meeting or reading the minutes should be able to identify the vote of each member.¹⁵⁷ Nonprocedural votes pertain to the merits or substance of an issue before the governing body, and any doubt whether a vote is substantive or procedural should be resolved in favor of a recorded roll call vote.¹⁵⁸ Secret ballots or votes are not permitted unless specifically provided by law.¹⁵⁹

¹⁵¹ N.D.A.G. 96-F-09 (Apr. 4 to Fabian Noack).

¹⁵² N.D.A.G. 99-O-07 (June 29 to Ed Malazdrewicz); N.D.A.G. 98-O-17 (July 10 to Barb Siegel).

¹⁵³ N.D.A.G. 2001-O-13 (Sept. 27 to Karl Hoppe).

¹⁵⁴ N.D.A.G. 2001-O-16 (Nov. 9 to Roger Johnson); Letter from Attorney General Nicholas Spaeth to Rod Larson (Sept. 19, 1989); Letter from Attorney General Nicholas Spaeth to David Nething (Aug. 28, 1986). See, e.g., N.D.C.C. § 40-06-05 (cities).

¹⁵⁵ Letter from Attorney General Nicholas Spaeth to Corliss Mushik (Apr. 25, 1990).

¹⁵⁶ N.D.C.C. § 44-04-21(1).

¹⁵⁷ N.D.A.G. 2004-O-17 (July 16 to Pembina County Fair Board) (voting by raising hands assumes every board member is raising their hand in a manner that can be seen by anyone attending the meeting); N.D.A.G. letter to Jacobson (Feb. 15, 2001).

¹⁵⁸ See, e.g., N.D.A.G. 98-O-09 (May 7 to Nick Zaharia) (approving payment of bills and an airport abatement are nonprocedural matters).

¹⁵⁹ N.D.A.G. 2001-O-16 (Nov. 9 to Roger Johnson).

5. Minutes of Meetings and Publication

Although not required for all public entities until 1997,¹⁶⁰ N.D.C.C. § 44-04-21(2) now provides:

Minutes must be kept of all open meetings and are records subject to section 44-04-18. The minutes must include, at a minimum:

- a. The names of the members attending the meeting;
- b. The date and time the meeting was called to order and adjourned;
- c. A list of topics discussed regarding public business;
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.

... [T]he disclosure of minutes kept under this subsection may not be conditioned on the approval of the minutes by the governing body.

This requirement applies to all governing bodies, including committees. Draft minutes should be prepared and made available to the public before the governing body's next regular meeting.¹⁶¹

There is no general statute expressly requiring all governing bodies to publish minutes or records of their entire meetings. However, specific statutes may require certain bodies to publish the minutes or other record of their meetings. These statutes are listed in the appendix following this section.

For example, every four years, the residents of a city must vote on whether to require the city governing body to publish minutes or a complete summary of its proceedings in the city's official newspaper.¹⁶² Every two years, the residents of a school district vote on whether a record of the school board's proceedings shall be published in the official newspaper of the school district.¹⁶³ A county governing body must supply to its official newspaper "a full and complete report of its official proceedings at each regular and

¹⁶⁰ But see, e.g., N.D.C.C. §§ 11-11-35 (counties), 40-06-02 (cities).

¹⁶¹ See N.D.A.G. 98-O-25 (Nov. 24 to Douglas Schauer); N.D.A.G. 98-O-04 (Mar. 3 to Norbert Sickler and Franklin Appledorn).

¹⁶² N.D.C.C. § 40-01-09.1.

¹⁶³ N.D.C.C. § 15.1-09-31. If required, each teacher's annual salary must be specified in the "complete" record of the meeting at which the teacher's contract was approved. N.D.A.G. 67-196 (June 19, 1967, to A.R. Nestoss). This record must include the required "itemized list of obligations" approved by the district at each meeting, and applies to special as well as general meetings, but a complete record would not be required for the closed meeting authorized to discuss the nonrenewal or termination of a teacher's contract if no formal action is taken. Also, the record need not be a verbatim transcript of the meeting, but need only show the substantive actions of the district board. N.D.A.G. 67-193 (Apr. 11, 1967, to M.F. Peterson).

special meeting no later than seven days after the meeting at which the report is read and approved."¹⁶⁴

¹⁶⁴ N.D.C.C. § 11-11-37; see also N.D.A.G. 94-L-90 (Apr. 4 to Jim Yockim). County expenditures must be itemized rather than categorized in the published report, but the required report need not be a verbatim account of the meeting so long as a fair statement of what transpired at each meeting is published, including each roll call vote. Letter from Attorney General Nicholas Spaeth to Gail Hagerty (Dec. 24, 1985); N.D.A.G. 69-124 (Nov. 28, 1969, to L.J. Schirado); N.D.A.G. 46-62 (July 25, 1946); N.D.A.G. 36-62 (Mar. 2, 1936).

North Dakota Court Decisions Regarding Open Meetings

1. North Dakota Supreme Court Cases

Green v. Beste, 76 N.W.2d 165 (N.D. 1956).

Under a statute stating that a city council may hold special meetings in the manner prescribed by city ordinance (N.D.C.C. § 40-08-10), a city was not authorized to hold a special meeting when it had failed to pass an ordinance specifying the procedure for calling a special meeting. The purpose of requiring all city council meetings to be open to the public is to enable the public to attend those meetings and to keep in touch with the proceedings of the council. The only way that the public can be assured of its right to do that is to have those meetings at the time specified by law or by a legally-enacted ordinance. Any proceedings at a meeting held at other times than so specified are void and illegal. Recessing a regular meeting to an unspecified later date constitutes an adjournment of the meeting. Because a special meeting of the council to create an improvement district was held on a date which was privately arranged by the members of the council, rather than at a time provided by statute or legally-enacted ordinance, the city council's creation of the improvement district was void.

Hennessey v. Grand Forks School District, 206 N.W.2d 876 (N.D. 1973).

The statute requiring the school board to notify a teacher that it is contemplating a nonrenewal of the teacher's contract and allowing the teacher, upon request, to meet with the school board in an executive session, calls only for an informational meeting and does not intend a decision-making meeting of the school board. A determination by the school board not to renew a teacher's contract must be made at a meeting which is open to the public, after the board has complied with the statute affording the teacher an opportunity for a meeting with the school board in an executive session. Once the executive session has been held at which the school board gives an explanation to the teacher and discusses with the teacher its reasons for its contemplated decision not to renew the contract, the board has jurisdiction to make a final decision at its next regular meeting.

Dathe v. Wildrose School District, 217 N.W.2d 781 (N.D. 1974).

A statute regarding a school board meeting to consider decisions not to renew teaching contracts stated, “[t]he meeting shall be an executive session of the board unless both the school board and the teacher requesting such meeting shall agree that it shall be open to other persons or the public.” N.D.C.C. § 15-47-38. The superintendent was allowed to attend the meeting and participate, even though the statute requires that the meeting “shall be an executive session of the board” unless the parties agree to the contrary. The parties did not agree to the contrary. Allowing the superintendent to attend the meeting did not affect its character as an “executive session.” An “executive session” is one from which the public is excluded and at which only such selected persons as the board may invite are permitted to be present.

Peters v. Bowman Public School District, 231 N.W.2d 817 (N.D. 1975).

An executive (closed) session conducted by the school district for the purpose of evaluating a teacher violated the open meetings law. The decision not to renew a teacher’s contract was illegal where, although the actual decision to send a letter of nonrenewal was taken at an open board meeting, the reasons for the contemplated nonrenewal were discussed at a prior, invalid executive session. Without implying that in every case action taken upon the basis of information learned outside of an official and legal board meeting is void, the court found the action of the school district in this case a clear attempt to evade the open meetings law. When the official action of the school district is clearly the product of an illegal meeting, documented in the minutes, and not clearly denied in the testimony, such official action is invalid even though such official action is taken at an otherwise legal meeting.

Dickinson Education Association v. Dickinson Public School District, 252 N.W.2d 205 (N.D. 1977).

All school board meetings at which teacher contract offers and school board offers and counteroffers are considered are required to be open to the public. In addition, all school board and teacher contract negotiating sessions, regardless of negotiating committee composition, are open to the public. In this case, a committee represented the school board in the negotiations. Violation of the open meetings provisions in this case constituted harmless error. (But see subsection 27 of N.D.C.C. § 15-29-08.)

Southern Valley Grain Dealers Association v. Board of County Commissioners of Richland County, 257 N.W.2d 425 (N.D. 1977).

There was no violation of due process in the granting of a tax exemption at a meeting of the board of county commissioners of Richland County on February 5, 1975, which meeting was a continuation, pursuant to statute, of a meeting and hearing held on November 19, 1974, statutory notice of which was given. So long as no decision was made by the county board of commissioners on the application for granting a tax exemption for a new industry, reasonable postponements of consideration of the matter, as to which statutory notice had been given, did not preclude action by the board at a later date. Statutory notice by an agency of consideration of a matter at a meeting on a specified date gives jurisdiction to act at that meeting, or at a later regular meeting, or at a meeting continued to a definite time and place within a reasonable time, but action once taken cannot be reversed or modified without again giving the statutory notice.

KFGO Radio, Inc. v. Rothe, 298 N.W.2d 505 (N.D. 1980).

A state's attorney's inquiry into facts surrounding a felony or criminal act causing a death involves actions which are quasi-judicial in nature and is within the scope of the constitutional requirement that "all courts shall be open". Hence, a state's attorney's inquiry must be open to the public, including the news media. Although the public has a constitutional right of access to court proceedings, limitations may be placed thereon as not only may the size of the court room justifiably limit attendance but in the interest of fairness a court may exclude members of the public who are creating physical disturbances or causing potentially dangerous situations. The right of access to judicial proceedings is limited both by the constitutional right to a fair trial and by the needs of government to obtain just convictions and to preserve the confidentiality of sensitive information and the identity of informants. A state's attorney's inquiry into facts surrounding a felony or a criminal act causing death does not come within the scope of the open meetings law, nor the notice provisions in N.D.C.C. § 44-04-20. A state's attorney is not required to give notice to the media or the public of pending state's attorney's inquiries into facts surrounding a suspected felony or criminal acts causing death. In view of the policy considerations which favor open court proceedings and in the absence of a directive from the Legislature to exclude the public from state's attorney's inquiries, such inquiries, under N.D.C.C. § 11-16-15, are open to the public.

Danroth v. Mandaree Public School District, 320 N.W.2d 780 (N.D. 1982).

Although the school board violated the open meetings law by holding a secret meeting at which it determined not to renew a teacher's contract, the teacher was not entitled to be reinstated or have damages awarded and the district court did not err in ordering only that the school board reconsider its action.

Quarles v. McKenzie Public School District, 325 N.W.2d 662 (N.D. 1982).

A teacher is entitled to request and receive a continuance of a nonrenewal hearing at any time during the meeting without showing any cause therefor. N.D.C.C. § 44-04-20 does not require a more cumbersome notice for a special or emergency meeting than for a regularly scheduled meeting. (But see N.D.C.C. § 44-04-20(6).)

Dickinson Newspapers, Inc. v. Jorgensen, 338 N.W.2d 72 (N.D. 1983).

Since a preliminary examination is not a trial or pretrial proceeding, neither the state constitutional provision that all courts shall be open nor the Sixth Amendment of the United States Constitution apply with the same force and effect as it applies to trials. The statute governing preliminary examinations expressly provides that the closing of a preliminary examination by excluding all except specified persons is within the discretion of the court, and thus, even if the preliminary examination were considered a “meeting” subject to the open meetings law, closure thereunder would be authorized. A magistrate’s discretion to close a preliminary examination does not mean that the proceedings will be private or secret. The record is not sealed but will usually be available to the public after the jury has been selected for trial or if and after the case has been dismissed. If, upon the motion by a criminal defendant and hearing thereon, the magistrate at a preliminary examination finds and determines that evidence inadmissible at trial on the issue of guilt or innocence will be admissible at the preliminary examination, which is designed only to determine probable cause and, as a result, there is a substantial likelihood that such evidence will interfere with the defendant’s right to a fair trial and impartial jury, then departure from the policy of openness in judicial proceedings is justified, since pretrial publicity of inadmissible evidence can defeat defendant’s constitutional right to a fair and public trial. The news media does not occupy a special status distinct from that of the general public; its right to be present at a criminal trial stems from being a member of the public. The constitutional right to a public trial is primarily for the benefit of the defendant, and the news media’s access to the courtroom is subordinate to the defendant’s right to a fair trial. The term “otherwise provided by law” in Article I, Section 10 of the North Dakota Constitution (relating to indictments for criminal offenses) is not limited to statutes, but includes rules adopted by the supreme court pursuant to Article VI, Section 3 of the North Dakota Constitution.

Annexation of a part of Donnybrook Public School District to Stanley Public School District, 365 N.W.2d 514 (N.D. 1985).

Failure of a county committee to take a recorded roll call vote on an annexation petition is not an adequate reason for the State Board of Public School Education to deny the annexation petition or to remand the matter to the county committee for a rehearing.

Minot Daily News v. Holum, 380 N.W.2d 347 (N.D. 1986).

On a criminal defendant's motion to close the preliminary examination to the public, the trial court must seek to accommodate the policy of openness in judicial proceedings with the defendant's right to a fair trial. The preliminary examination of a criminal defendant should be closed to the public only upon a showing that evidence inadmissible at the trial will be offered at the preliminary examination, that there is a substantial likelihood of interference with the defendant's right to a fair trial, and that there are no reasonable alternatives to complete disclosure. The public should be excluded only from that portion of the preliminary examination that jeopardizes the defendant's right to a fair trial, and the transcript of the proceedings should be made available to the public at the earliest time consistent with the defendant's right to a fair trial. The preliminary examination of a criminal defendant should not be closed to the public without factual and legal findings on the record supporting the closure, and explaining why alternatives to closure were inadequate.

Retzlaff v. Grand Forks Public School District, 424 N.W.2d 637 (N.D. 1988).

The school board did not violate the open meetings law by privately meeting with the principal in groups of two or three to discuss the nonrenewal of a first-year teacher's contract, as the meetings occurred after the school board had voted not to renew the teacher's contract at an open meeting. A meeting of less than a quorum to discuss an action already taken at an open meeting is not subject to the open meetings law.

Edinger v. Governing Authority of Stutsman Co. Correctional Center, 695 N.W.2d 447 (N.D. 2005).

A governing body may consult its attorney if there is a reasonable probability of some form of legal action, either litigation or an administrative proceeding. When the information available to the governing body suggests a reasonable probability of litigation or adversarial administrative proceedings, N.D.C.C. § 44-04-19.1 authorizes the governing body to close a portion of a meeting to receive and discuss the advice of its attorney. The definition of "administrative agency" in N.D.C.C. § 28-32-01(2) does not apply to the attorney-consultation exemption to the open meeting law under N.D.C.C. § 44-04-19.1.

2. North Dakota District Court Cases

Meyer v. Nelson County Reorganization Committee, Civil No. 5549 (N.D. Northeast Central Dist., July 19, 1993) (Nelson Co.).

A joint county school district reorganization committee violated the open meetings law. The court ordered the committee to meet again at an open meeting to reconsider the matter that had been considered at the improperly closed meeting.

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ATTORNEY CONSULTATION

<u>N.D.A.G. 2005-O-04</u>	February 9 2005, to Cavalier City Council Reasonably predictable litigation.
<u>N.D.A.G. 2004-O-24</u>	November 4 2004, to Southwest Multi-County Correction Center Realistic and tangible threat of litigation.
<u>N.D.A.G. 2004-O-19</u>	August 10 2004, to Cavalier City Council Tangible threat of litigation.
<u>N.D.A.G. 2003-O-14</u>	October 22 2003, to Harvey City Council "Reasonably predictable" requires more than a simple possibility of litigation.
<u>N.D.A.G. 2002-O-10</u>	October 18 2002, to McKenzie School Board Discussion of legal options in administrative proceedings.
<u>N.D.A.G. 2002-O-01</u>	January 10 2002, to Wade Enget Exemption is waived if adversary is allowed to attend meeting.
<u>N.D.A.G. 2001-O-15</u>	November 5 2001, to Mary O'Donnell Meaning of "reasonably predictable."
<u>N.D.A.G. 2000-O-12</u>	October 17 2000, to Scott Solem Governing body has legal interest but is not a party.
<u>N.D.A.G. 2000-O-03</u>	January 31 2000, to Duane Schurman Can only be held during a properly noticed open meeting.
<u>N.D.A.G. 99-O-07</u>	June 29 1999, to Ed Malazdrewicz Discussion regarding a change in a licensing board's decision.
<u>N.D.A.G. 99-O-06</u>	June 14 1999, to Ed Malazdrewicz License revocation proceeding is "adversarial administrative proceeding.
<u>N.D.A.G. 99-O-04</u>	April 22 1999, to Gregory Lange Does not include status updates.
<u>N.D.A.G. 98-O-12</u>	June 9 1998, to Melvin Fischer and Lowell Jensen Discussion directly related to civil action.
<u>N.D.A.G. 98-O-01</u>	January 23 1998, to Phyllis Ratcliffe Does not include litigation status updates.
N.D.A.G. Letter	September 19 1991, to Michel McIntee

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N.D.A.G. Letter July 19 1977, to Dewel Viker, Jr.
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CITIES

[N.D.A.G. 2005-O-18](#) November 8 2005, to Grand Forks City Council
City violated the notice requirements by stating the wrong township that was to be discussed in executive session.

[N.D.A.G. 2005-O-15](#) September 19 2005, to Bismarck City Commission
Meeting held by city consultant who was not under contract with city not open meeting.

[N.D.A.G. 2005-O-08](#) May 13 2005, to Napoleon City Council
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[N.D.A.G. 2005-O-07](#) May 12 2005, to Rolla City Council
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[N.D.A.G. 2005-L-14](#) April 29 2005, to Mary Ekstrom
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[N.D.A.G. 2004-O-16](#) July 16 2004, to Gladstone City Council
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[N.D.A.G. 2004-O-12](#) June 16 2004, to Medora City Council
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[N.D.A.G. 2003-O-18](#) November 3 2003, to Minto Planning and Zoning Committee
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[N.D.A.G. 2003-O-13](#) October 22 2003, to Minto City Council
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[N.D.A.G. 2003-O-12](#) September 8 2003, to Fargo City Commission
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[N.D.A.G. 2003-O-05](#) April 11 2003, to Glen Ullin City Council
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[N.D.A.G. 2003-O-03](#) February 21 2003, to Minto City Council

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N.D.A.G. Letter August 28 1986, to David Nething
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N.D.A.G. 58-186 November 17 1958
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N.D.A.G. 51-20 January 15 1951
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N.D.A.G. 45-68 June 20 1945
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CONTRACT STRATEGY – SEE NEGOTIATION STRATEGY SESSIONS

COUNTIES

[N.D.A.G. 2005-O-17](#) November 8 2005, to Cavalier County Weed Board
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[N.D.A.G. 98-L-113](#) August 25 1998, to Wayne Jones
Delegation of duty to keep minutes.

[N.D.A.G. 98-F-25](#) August 11 1998, to Cynthia Feland
Commissioners have no power to change accurate minutes; publication.

[N.D.A.G. 98-F-11](#) April 30 1998, to Mark Blumer
Group responsible for filling vacancies on county commission.

N.D.A.G. Letter December 24 1985, to Gail Hagerty
Publication and content of minutes; roll call voting.

N.D.A.G. 72-78 February 23 1972, to Robert Eckert
State's attorney's inquests.

N.D.A.G. 69-124 November 28 1969, to L.J. Schirado
Content of published minutes.

N.D.A.G. 46-62 July 25, 1946
Publication and content of minutes.

N.D.A.G. 36-62 March 2, 1936
Publication and content of minutes.

ECONOMIC DEVELOPMENT

[N.D.A.G. 2002-O-09](#) September 17 2002, to Nevin Van de Streek, et al
Trade secrets and commercial information are of a privileged
nature, competitive disadvantage if disclosed.

[N.D.A.G. 2001-O-11](#) September 13 2001, to Greg Selbo
Economic development.

[N.D.A.G. 2001-O-01](#) February 13 2001, to Michael Maus
Discussion of efforts to recruit a business.

[N.D.A.G. 2000-O-07](#) June 26 2000, to Tim Priebe
Discussion of economic development records.

[N.D.A.G. 95-L-253](#) November 8 to Bryan Dvirnak
Commercial and financial information.

N.D.A.G. Letter December 19 1991, to Paul Govig
Discussions of commercial and financial information.

EXECUTIVE SESSION, PERSONNEL MATTERS

[N.D.A.G. 2004-O-21](#) October 8 2004, to Fort Totten Public School District
Personnel matter discussed in executive session.

[N.D.A.G. 2004-O-19](#) August 10 2004, to Cavalier City Council
Statements about job performance.

[N.D.A.G. 2003-O-14](#) October 22 2003, to Harvey City Council
Job evaluation in executive session.

[N.D.A.G. 2001-O-17](#) December 24 2001, to Ronald Reichert
Employee reviews and negotiation strategy sessions.

[N.D.A.G. 2001-O-09](#) August 31 2001, to Gabe Plante and Wanda Bergarde
Personnel matters are generally not closed.

N.D.A.G. Letter September 19, 1991, to Michael McIntee
Discussion of disciplinary action against chief of police which
is not "attorney consultation" must be open.

N.D.A.G. Letter August 10, 1989, to Sparb Collins
Job interviews are open.

[N.D.A.G. 82-63](#) August 20 1982, to Joe Crawford
Executive session for nonrenewal of teacher.

N.D.A.G. 78-174 March 15 1978, to Evan Lips
Teacher renewal meeting.

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS

[N.D.A.G. 2005-O-18](#) November 8 2005, to Grand Forks City Council
Using only the term “negotiations” in the announcement of an executive session is misleading.

[N.D.A.G. 2005-O-04](#) February 9 2005, to Cavalier City Council
The notice of the executive session met the minimum requirements.

[N.D.A.G. 2004-O-22](#) October 12 2004, to Cavalier City Council
Final action not taken during executive session.

[N.D.A.G. 2004-O-21](#) October 8 2004, to Fort Totten Public School District
Failed to record executive session.

[N.D.A.G. 2004-O-13](#) June 28 2004, to Richland Public School District
Announcement supplemented by member’s discussion identified legal authority and topic.

[N.D.A.G. 2004-O-10](#) May 3 2004, to Stutsman County Correctional Center
Legal basis for the executive session was stated prior to going into executive session.

[N.D.A.G. 2003-O-22](#) December 1 2003, to Walsh County Commission
Announcement did not refer to negotiation strategy or similar language.

[N.D.A.G. 2003-O-15](#) October 22 2003, to Fargo Airport Authority
No legal authority announced and executive session not recorded.

[N.D.A.G. 2003-O-03](#) February 21 2003, to Minto City Council
No legal requirement to announce when the open meeting will reconvene after the completion of an executive session.

[N.D.A.G. 2002-O-10](#) October 18 2002, to McKenzie School Board
Attendance by non-members.

[N.D.A.G. 2002-O-01](#) January 10 2002, to Wade Enget
Announcement of attorney consultation or negotiation strategy session.

[N.D.A.G. 2001-O-17](#) December 24 2001, to Ronald Reichert
Announcement for contract negotiation strategy.

[N.D.A.G. 2001-F-10](#) December 11 2001, to Eric Hardmeyer
Contents of motion following executive session.

<u>N.D.A.G. 2001-O-15</u>	November 5 2001, to Mary O'Donnell Announcement for attorney consultation.
<u>N.D.A.G. 2001-O-09</u>	August 31 2001, to Gabe Plante and Wanda Bergarde Announcement for personnel matters.
<u>N.D.A.G. 2000-O-12</u>	October 17 2000, to Scott Solem Announcement of attorney consultation.
<u>N.D.A.G. 2000-O-10</u>	July 19 2000, to Howard Swanson Sufficiency of announcement for attorney consultation.
<u>N.D.A.G. 2000-O-06</u>	May 5 2000, to Tom Irgens Sufficiency of announcement.
<u>N.D.A.G. 2000-O-05</u>	April 4 2000, to Larry Gegelman Sufficiency of announcement for negotiation session.
<u>N.D.A.G. 2000-O-04</u>	March 15 2000, to Larry Gegelman Voting on final action.
<u>N.D.A.G. 2000-O-02</u>	January 31 2000, to Dan Fremling and Tom Tupa Vote not required to discuss confidential records.
<u>N.D.A.G. 2000-O-01</u>	January 24 2000, to Donna Black Cloud Announcement is required.
<u>N.D.A.G. 99-L-115</u>	November 18 1999, to Howard Swanson Rights of absent member.
<u>N.D.A.G. 99-O-04</u>	April 22 1999, to Gregory Lange Announcement must include both the legal authority and the general topic for the session.
<u>N.D.A.G. 99-O-01</u>	February 22 1999, to Howard Swanson Attendance by non-members.
<u>N.D.A.G. 98-O-25</u>	November 24 1998, to Douglas Schauer Requirements are not rigidly applied.
<u>N.D.A.G. 98-O-01</u>	January 23 1998, to Phyllis Ratcliffe Announcement of legal authority.

EXECUTIVE SESSION, RECORDS

<u>N.D.A.G. 2004-O-13</u>	June 28 2004, to Richland Public School District Recording of an executive session not required to be released.
<u>N.D.A.G. 2004-O-10</u>	May 3 2004, to Stutsman County Correctional Center Recording of a closed portion of a meeting is a closed record.

<u>N.D.A.G. 2003-O-15</u>	October 22 2003, to Fargo Airport Authority Power-point presentation viewed in executive session.
<u>N.D.A.G. 2000-O-06</u>	May 5 2000, to Tom Irgens Discussion of letter from bus driver based on observations as a parent.
<u>N.D.A.G. 2000-O-04</u>	March 15 2000, to Larry Gegelman Executive session for discussion of FERPA records.
<u>N.D.A.G. 2000-O-02</u>	January 31 2000, to Dan Fremling and Tom Tupa Person with access to records is entitled to attend executive session to discuss those records.
<u>N.D.A.G. 98-F-22</u>	June 23 1998, to Lois Delmore Portion of administrative hearing must be closed when confidential records are discussed.
<u>N.D.A.G. 98-O-06</u>	April 14 1998, to Les Jensen Discussion during executive session must be limited to the confidential records.
<u>N.D.A.G. 94-F-28</u>	September 2 1994, to Bill Oban Executive session to discuss educational records under FERPA.
N.D.A.G. Letter	January 21 1988, to Alan Person Meeting may be closed to consider confidential records.
N.D.A.G. Letter	April 23 1986, to Joseph Lamb Discussion of customer information.
N.D.A.G. Letter	May 17 1985, to Orville Hagen Confidential records and wage claim hearings.
N.D.A.G. 79-210	November 30 1979, to Irvin Riedman Discussion of parole board records.
N.D.A.G. Letter	May 3 1978, to Thomas Clifford Discussion of confidential student records.

GOVERNING BODY

<u>N.D.A.G. 2005-O-03</u>	February 8 2005, to City of Fargo A committee appointed by the mayor at the direction of the city commission that reports to the commission is a governing body.
<u>N.D.A.G. 2005-O-02</u>	January 12 2005, to Cass County Historical Society An executive committee authorized by a board is a governing body.

<u>N.D.A.G. 2004-O-15</u>	July 9 2004, to Fargo School District Committee delegated authority to perform any function on behalf of a governing body subject to law.
<u>N.D.A.G. 2004-O-12</u>	June 16 2004, to Medora City Council Delegation to one person doesn't create a governing body.
<u>N.D.A.G. 2003-O-15</u>	October 22 2003, to Fargo Airport Authority Committees set up by governing bodies subject to open meetings law.
<u>N.D.A.G. 2001-O-15</u>	November 5 2001, to Mary O'Donnell County social service board.
<u>N.D.A.G. 2001-O-04</u>	May 16 2001, to Laurel Forsberg Committee of city council.
<u>N.D.A.G. 99-O-05</u>	May 5 1999, to Bonnie Johnson and Birch Burdick Single individual.
<u>N.D.A.G. 98-O-13</u>	June 11 1998, to Edward Urness Group appointed by county commission is a governing body.
<u>N.D.A.G. 98-F-12</u>	May 7 1998, to Bill Oban A single individual is not a governing body.
<u>N.D.A.G. 98-O-09</u>	May 7 1998, to Nick Zaharia Township board and township electors.
<u>N.D.A.G. 98-F-11</u>	April 30 1998, to Mark Blumer No right to participate in meeting.
<u>N.D.A.G. 98-O-02</u>	January 27 1998, to Melvin Fischer and Lowell Jensen Delegations by one individual.
<u>N.D.A.G. 97-O-02</u>	December 22 1997, to Melvin Fischer and Lowell Jensen Delegations by one individual.
<u>N.D.A.G. 96-F-09</u>	April 4 1996, to Fabian Noack Meetings of mayor and department heads; recording of open meetings.
N.D.A.G. Letter	November 28 1990, to Jennifer Ring Student senate meetings.
N.D.A.G. Letter	March 19 1990, to Janet Wentz Faculty senate meetings and advisory groups.
N.D.A.G. Letter	March 17 1989, to Dan Ulmer Committees and task forces.
N.D.A.G. Letter	March 29 1985, to Gail Hagerty Meeting involving only one board member.

[N.D.A.G. 81-10](#) February 6 1981, to Wayne Stenehjem
A group created by a school board is a public body.

N.D.A.G. 67-244 January 4 1967, to Kenneth Raschke
Faculty senate and advisory groups.

HIGHER EDUCATION

[N.D.A.G. 2002-O-12](#) December 18 2002, to State Board of Higher Education
Proximity of the public entity's meeting place to people affected by its decisions.

[N.D.A.G. 81-41](#) April 15 1981, to Kent Alm
Appointment or removal of college president.

[N.D.A.G. 81-39](#) April 13 1981, to Lloyd Nygaard
Appointment or removal of university staff.

LABOR DEPARTMENT

N.D.A.G. Letter May 17 1985, to Orville Hagen
Confidential records and wage claim hearings.

MEETING, DEFINED

[N.D.A.G. 2005-L-14](#) April 29 2005, to Mary Ekstrom
Delegation to one person does not trigger the open meetings law.

[N.D.A.G. 2005-O-03](#) February 8 2005, to City of Fargo
Even if a committee has no binding decision making authority the meeting is subject to the open meetings law.

[N.D.A.G. 2005-O-02](#) January 12 2005, to Cass County Historical Society
Meetings may take place by telephone.

[N.D.A.G. 2004-O-12](#) June 16 2004, to Medora City Council
Delegation must be to a group of persons to be a meeting.

[N.D.A.G. 2004-O-02](#) January 13 2004, to Renville County Commissioners
Training session a meeting.

[N.D.A.G. 2003-O-05](#) April 11 2003, to Glen Ullin City Council
Three members of a seven-member city council attending a meeting of another public entity is not a meeting if there is no delegation by the city council.

[N.D.A.G. 2003-L-01](#) January 2 2003, to James T. Odegard
School board member may participate by telephone or video equipment.

<u>N.D.A.G. 2002-O-07</u>	July 12 2002 (and August 13 2002 Addendum) to Kindred Public School District Social gathering of school board members where public business is not discussed is not a meeting.
<u>N.D.A.G. 2001-O-18</u>	December 27 2001, to Mary O'Donnell Meeting must involve a quorum.
<u>N.D.A.G. 2001-O-14</u>	October 4 2001, to Steven McCullough Series of written communications is not a meeting.
<u>N.D.A.G. 2001-O-07</u>	August 6 2001, to Steven McCullough Final action is not required for gathering to be a meeting.
<u>N.D.A.G. 2001-O-05</u>	June 7 2001, to D. Guy McDonald School board retreat.
<u>N.D.A.G. 2001-O-03</u>	May 3 2001, to Paul Koehmstedt Pre-meeting involving less than a quorum.
<u>N.D.A.G. 2000-O-08</u>	July 14 2000, to Ellen Elder Smaller gatherings involving a quorum.
<u>N.D.A.G. 99-O-09</u>	November 1 1999, to Jeff Sheets Gathering must pertain to public business to be a meeting.
<u>N.D.A.G. 98-O-18</u>	August 11 1999, to Marvin Gillig et al Attendance at meeting of another group.
<u>N.D.A.G. 98-F-16</u>	June 8 1998, to Dan Gaustad Sequential on-site investigations by a quorum.
<u>N.D.A.G. 98-O-11</u>	June 8 1998, to Duane Mullenberg and Fabian Noack Gatherings at which staff are given instructions.
<u>N.D.A.G. 98-O-10</u>	May 7 1998, to R. James Maxson et al Attendance at meeting of another group.
<u>N.D.A.G. 98-O-08</u>	May 4 1998, to Bob Dykshoorn Action need not be taken for gathering to be a meeting.
<u>N.D.A.G. 98-O-05</u>	March 3 1998, to Paul Ebeltoft Four elements to definition of meeting.
<u>N.D.A.G. 98-O-04</u>	March 3 1998, to Franklin Appledorn and Norbert Sickler Meeting between one member and staff.
N.D.A.G. Letter	March 19 1990, to Janet Wentz Faculty senate meetings and advisory groups.
N.D.A.G. Letter	February 29 1984, to Richard Schnell Meetings by conference call.

N.D.A.G. Letter	March 5 1976, to Myron Atkinson All gatherings of a quorum are meetings.
N.D.A.G. 72-78	February 23 1972, to Robert Eckert State's attorney's inquests.

MINUTES, CONTENT

<u>N.D.A.G. 2005-O-18</u>	November 8 2005, to Grand Forks City Council Minutes of regular meeting failed to list who attended the executive session and when it started and ended.
<u>N.D.A.G. 2005-O-10</u>	June 9 2005, to Wilton Rural Ambulance District Roll call votes of every member should be reflected in the minutes.
<u>N.D.A.G. 2005-O-08</u>	May 13 2005, to Napoleon City Council Minutes may reflect discussions that took place at meeting, but it is not required by statute.
<u>N.D.A.G. 2005-O-02</u>	January 12 2005, to Cass County Historical Society Committees subject to the open meetings law must take minutes.
<u>N.D.A.G. 2005-O-01</u>	January 10 2005, to City of Napoleon List of topics discussed at a meeting must be listed in the minutes.
<u>N.D.A.G. 2004-O-21</u>	October 8 2004, to Fort Totten Public School District General topic of executive session not in minutes.
<u>N.D.A.G. 2004-O-16</u>	July 16 2004, to Gladstone City Council Accurate information removed from minutes.
<u>N.D.A.G. 98-O-18</u>	August 11 1998, to Marvin Gillig et al Minutes do not have to contain location of meeting.
<u>N.D.A.G. 98-O-14</u>	June 25 1998, to Patricia Lynch Topics discussed.
<u>N.D.A.G. 98-O-09</u>	May 7 1998, to Nick Zaharia Minutes must contain record of motions and results of votes.

MINUTES, PUBLICATION

<u>N.D.A.G. 99-L-112</u>	November 18 1998, to Larry Robinson Vote to disapprove publication.
<u>N.D.A.G. 98-F-25</u>	August 11 1998, to Cynthia Feland Unapproved minutes.

<u>N.D.A.G. 92-08</u>	April 8 1992, to Mary Nordsven Publication of minutes.
N.D.A.G. Letter	December 24 1985, to Gail Hagerty Publication and content of minutes; roll call voting.
N.D.A.G. 69-124	November 28 1969, to L.J. Schirado Content of published minutes.
N.D.A.G. 67-196	June 19 1967, to A.R. Nestoss Publication and content of minutes.
N.D.A.G. 67-193	April 11 1967, to M.F. Peterson Publication and content of minutes.
N.D.A.G. 58-186	November 17 1958 Publication and content of minutes.
N.D.A.G. 51-20	January 15 1951 Publication and content of minutes.
N.D.A.G. 46-62	July 25 1946 Publication and content of minutes.
N.D.A.G. 45-68	June 20 1945 Publication and content of minutes.
N.D.A.G. 36-62	March 2 1936 Publication and content of minutes.

NEGOTIATION STRATEGY SESSIONS

<u>N.D.A.G. 2005-O-21</u>	December 8 2005, to Harvey School Board Giving authority to unilaterally issue contracts goes beyond negotiation strategy or instruction.
<u>N.D.A.G. 2005-O-18</u>	November 8 2005, to Grand Forks City Council Discussing instructions with the negotiator is not "final action".
<u>N.D.A.G. 2005-O-03</u>	February 8 2005, to City of Fargo Cannot close a meeting for contract negotiation if the other party is in the closed session.
<u>N.D.A.G. 2004-O-24</u>	November 4 2004, to Southwest Multi-County Correction Center Negotiation strategy for early retirement contract.
<u>N.D.A.G. 2004-O-13</u>	June 28 2004, to Richland Public School District Executive session to discuss negotiation strategy for collective bargaining representatives.
<u>N.D.A.G. 2003-O-22</u>	December 1 2003, to Walsh County Commission

- No authorization to close meeting to receive an update or summary form negotiator on status of contract negotiations.
- [N.D.A.G. 2001-O-17](#) December 24 2001, to Ronald Reichert
Session may not be held to evaluate personnel.
- [N.D.A.G. 2000-O-09](#) July 17 2000, to Ellen Elder
Elements and scope of the exception.
- [N.D.A.G. 2000-O-05](#) April 4 2000, to Larry Gegelman
Terms "strategy" and "instructions" are key terms which limit the exception.
- [N.D.A.G. 99-O-01](#) February 22 1999, to Howard Swanson
Does not apply to all discussions about a contract.
- [N.D.A.G. 98-O-12](#) June 9 1998, to Melvin Fischer and Lowell Jensen
Does not apply to updates on status of contract negotiations.

NONGOVERNMENTAL ORGANIZATIONS

See also Public Entity, Defined

- [N.D.A.G. 2004-O-14](#) July 1 2004, to Fargo-Moorhead Chamber of Commerce
Chamber not subject to open meeting law.
- [N.D.A.G. 2004-O-04](#) January 22 2004, to St. Luke's Hospital
Private, nonprofit hospital may be public entity if supported by public funds.
- [N.D.A.G. 2003-O-08](#) July 22 2003, to Dakota Center for Independent Living
Nonprofit organization recognized by state law.
- [N.D.A.G. 2003-O-02](#) February 21 2003, to James River Senior Citizen's Center
Senior citizen's center receiving unrestricted funds used for general support was public entity.
- [N.D.A.G. 2002-O-09](#) September 17 2002, to Nevin Van de Streek, et al
Minot Area Chamber of Commerce Task Force is supported by public funds and an agent of the city of Minot.
- [N.D.A.G. 2001-O-11](#) September 13 2001, to Greg Selbo
Economic development corporation.
- [N.D.A.G. 98-O-23](#) November 9 1998, to Howard Swanson
Public funds not limited to cash; de minimis contributions; recognized by resolution.
- [N.D.A.G. 98-O-21](#) September 22 1998, to Wes Tossett and Gary Puppe
Four ways for non-governmental organization to be a public entity.

<u>N.D.A.G. 98-F-19</u>	June 10 1998, to Carol Olson Exchange of funds for identified goods and services is not "support" by public funds.
<u>N.D.A.G. 96-F-18</u>	September 13 1996, to Gerald Sveen Organization receiving direct appropriation of government funds is "expending public funds" and is a public entity.
N.D.A.G. Letter	August 2 1991, to Ken Solberg Government self-insurance pool is an agency of its members and is supported by public funds.
N.D.A.G. Letter	September 19 1989, to Rod Larson Supported by public funds and procedures for conducting a meeting.
N.D.A.G. Letter	January 28 1985, to Wayne Jones Organization is subject to open meetings law only if supported by or expending public funds.

NOTICE OF MEETINGS

<u>N.D.A.G. 2005-O-18</u>	November 8 2005, to Grand Forks City Council Notice must correctly identify the general subject matter of an executive session.
<u>N.D.A.G. 2005-O-17</u>	November 8 2005, to Cavalier County Weed Board Location of a meeting is a material element of the notice.
<u>N.D.A.G. 2005-O-10</u>	June 9 2005 to Wilton Rural Ambulance District A public entity serving two counties should file notices with the county auditor of each participating county.
<u>N.D.A.G. 2005-O-08</u>	May 13 2005, to Napoleon City Council Notice must be provided to public at the same time as the governing body's members.
<u>N.D.A.G. 2005-O-07</u>	May 12 2005, to Rolla City Council Notice must be actually filed with the city auditor.
<u>N.D.A.G. 2005-O-04</u>	February 9 2005, to Cavalier City Council Notice must contain the location even when location is set by city ordinance.
<u>N.D.A.G. 2005-O-02</u>	January 12 2005, to Cass County Historical Society An executive committee authorized by the board must give notice of meetings.
<u>N.D.A.G. 2005-O-01</u>	January 10 2005, to City of Napoleon Notice of regular meeting must contain any topics expected when it is prepared.

<u>N.D.A.G. 2004-O-22</u>	October 12 2004, to Cavalier City Council Special meeting notice must contain topics.
<u>N.D.A.G. 2004-O-20</u>	September 7 2004, to City of Napoleon Notice of special meeting must be posted in advance.
<u>N.D.A.G. 2004-O-19</u>	August 10 2004, to Cavalier City Council Special meeting notice must have location and executive session.
<u>N.D.A.G. 2004-O-18</u>	July 16 2004, to Mount Pleasant Public School District Notice must include all topics expected to be discussed at a regular meeting at the time the notice is prepared.
<u>N.D.A.G. 2004-O-13</u>	June 28 2004, to Richland Public School District General description of executive session not in notice.
<u>N.D.A.G. 2004-O-10</u>	May 3 2004, to Stutsman County Correctional Center Location of the meeting is a material element of the notice.
<u>N.D.A.G. 2004-O-09</u>	April 12 2004, to Halliday Public School Public notice must be given to public at same time as to the members.
<u>N.D.A.G. 2004-O-08</u>	April 6 2004, to McIntosh County Commissioners Informal discussion with state's attorney a meeting subject to notice.
<u>N.D.A.G. 2004-O-02</u>	January 13 2004, to Renville County Commissioners Training session should be noticed as meeting.
<u>N.D.A.G. 2003-O-22</u>	December 1 2003, to Walsh County Commission Citation to N.D.C.C. § 44-04-19.1 fails to describe the subject matter of an executive session.
<u>N.D.A.G. 2003-O-20</u>	November 13 2003, to Towner County Commission Topics must be included in special meeting notice.
<u>N.D.A.G. 2003-O-19</u>	November 12 2003, to Northwood Park Board Giving notice in alternative places, like television, does not replace the statutory notice requirements.
<u>N.D.A.G. 2003-O-16</u>	October 22 2003, to Workforce Safety and Insurance Board Notice to official newspaper.
<u>N.D.A.G. 2003-O-13</u>	October 22 2003, to Minto City Council Committees subject to notice requirements.
<u>N.D.A.G. 2003-O-07</u>	June 5 2003, to Kindred School District No. 2 Notice of an agenda change before a special meeting.
<u>N.D.A.G. 2002-O-12</u>	December 18 2002, to State Board of Higher Education

Notice not required to be published.

[N.D.A.G. 2002-O-11](#)

November 29 2002, to Larimore City Council
Special meeting notices must list specific issues to be discussed at meeting.

[N.D.A.G. 2002-O-10](#)

October 18 2002, to McKenzie School Board
Public must be able to determine the topic of an executive session in a notice of a special meeting that will include an executive session.

[N.D.A.G. 2002-O-07](#)

July 12 2002 (August 13 2002 Addendum) to Kindred Public School District
School district filed insufficient notices with county auditor.

[N.D.A.G. 2001-O-08](#)

August 20 2001, to Karl Hoppe
Official city newspaper.

[N.D.A.G. 2001-O-07](#)

August 6 2001, to Steven McCullough
Failure to prepare written notice.

[N.D.A.G. 2001-O-05](#)

June 7 2001, to D. Guy McDonald
Announcement of meeting date at previous meeting was not sufficient notice.

[N.D.A.G. 2000-O-10](#)

July 19 2000, to Howard Swanson
Reference in notice to executive sessions.

[N.D.A.G. 2000-O-03](#)

January 31 2000, to Duane Schurman
Notice to interested persons is not a substitute for public notice.

[N.D.A.G. 99-O-10](#)

December 7 1999, to Duane Schurman
Timing of notice.

[N.D.A.G. 99-O-08](#)

September 9 1999, to Cameron Sillers
Discussion of items not included in notice.

[N.D.A.G. 99-O-06](#)

June 14 1999, to Ed Malazdrewicz
Notice to individual is not required unless requested.

[N.D.A.G. 98-O-21](#)

September 22 1998, to Wes Tossett and Gary Puppe
Topics to be discussed.

[N.D.A.G. 98-O-13](#)

June 11 1998, to Edward Urness
Mandatory minimum notice period.

[N.D.A.G. 98-O-11](#)

June 8 1998, to Duane Mullenberg and Fabian Noack
Central filing; notice to interested members of public.

[N.D.A.G. 98-O-10](#)

May 7 1998, to R. James Maxson et al advance notice.

[N.D.A.G. 98-O-09](#)

May 7 1998, to Nick Zaharia

	Notice publication.
<u>N.D.A.G. 98-O-08</u>	May 4 1998, to Bob Dykshoorn Advance notice.
<u>N.D.A.G. 98-O-01</u>	January 23 1998, to Phyllis Ratcliffe Emergency or special meetings.
N.D.A.G. Letter	June 30 1986, to Jack Murphy Contents of notice, departure from agenda, and emergency meetings.

OPEN MEETINGS, IN GENERAL

<u>N.D.A.G. 2005-O-19</u>	November 22 2005, to Supreme Court Gender Fairness Implementation Committee Open meetings law does not apply to exclusive functions of the court.
<u>N.D.A.G. 2005-O-14</u>	August 25 2005, to Cando School Board A school assembly is a meeting of the school board when a quorum of the board is present.
<u>N.D.A.G. 2004-O-20</u>	September 7 2004, to City of Napoleon Member of public may videotape meeting.
<u>N.D.A.G. 2004-O-17</u>	July 16 2004, to Pembina County Fair Board People attending a meeting should be able to see how members vote.
<u>N.D.A.G. 2004-O-08</u>	April 6 2004, to McIntosh County Commission Informal meeting of commission with state's attorney is a meeting.
<u>N.D.A.G. 2004-O-04</u>	January 22 2004, to St. Luke's Hospital Meeting of private hospital open regarding public funds.
<u>N.D.A.G. 2003-O-19</u>	November 12 2003, to Northwood Park Board Social gatherings are not meetings if no public business is discussed.
<u>N.D.A.G. 2003-O-18</u>	November 3 2003, to Minto Planning and Zoning Committee Individual committee members going in to sign something at office not a meeting.
<u>N.D.A.G. 2003-O-15</u>	October 22 2003, to Fargo Airport Authority Committees subject to open meetings.
<u>N.D.A.G. 2003-O-12</u>	September 8 2003, to Fargo City Commission Governing body may discuss an item of public business at regular meeting.

<u>N.D.A.G. 2003-O-08</u>	July 22 2003, to Dakota Center for Independent Living Honor requests for notice of meetings for reasonable length of time.
<u>N.D.A.G. 2003-O-07</u>	June 5 2003, to Kindred School District No. 2 Public has right of access to open meeting, but no right to participate.
<u>N.D.A.G. 2003-O-03</u>	February 21 2003, to Minto City Council No legal requirement to announce when the open meeting will reconvene after the completion of an executive session.
<u>N.D.A.G. 2002-O-12</u>	December 18 2002, to State Board of Higher Education Meeting location of state-wide entities.
<u>N.D.A.G. 2001-O-14</u>	October 4 2001, to Steven McCullough Open meetings law does not prohibit public entity from transacting business in writing.
<u>N.D.A.G. 2001-O-13</u>	September 27 2001, to Karl Hoppe Meeting that cannot be heard.
<u>N.D.A.G. 99-O-08</u>	September 9 1999, to Cameron Sillers Deliberately concealing meeting from public.
<u>N.D.A.G. 99-O-07</u>	June 29 1999, to Ed Malazdrewicz No right to participate.
<u>N.D.A.G. 98-O-17</u>	July 10 1998, to Barb Siegel Locked out of meeting location.
<u>N.D.A.G. 98-O-16</u>	July 2 1998, to Jeff Schneider Deliberately concealing meeting from public.
<u>N.D.A.G. 98-F-11</u>	April 30 1998, to Mark Blumer No right to participate.
<u>N.D.A.G. 96-F-09</u>	April 4 1996, to Fabian Noack Meetings of mayor and department heads; recording of open meetings.
N.D.A.G. Letter	April 25 1990, to Corliss Mushik Procedures for conducting a meeting.
N.D.A.G. Letter	September 19 1989, to Rod Larson Supported by public funds and procedures for conducting a meeting.
N.D.A.G. Letter	February 12 1987, to Darrell Farland Accessibility of the meeting room.
N.D.A.G. Letter	August 28 1986, to David Nething

	Procedures for city council meetings.
N.D.A.G. Letter	March 29 1985, to Gail Hagerty Meetings involving one member of governing body.
N.D.A.G. Letter	February 29 1984, to Richard Schnell Meetings by conference call.
N.D.A.G. Letter	March 31 1978, to Burness Reed Open meetings law is violated when someone is refused access to a meeting.
N.D.A.G. Letter	October 12 1977, to Dale Moench State licensing boards.
N.D.A.G. Letter	July 19 1977, to Dewel Viker, Jr. Attorney-client privilege.
N.D.A.G. Letter	March 5 1976, to Myron Atkinson All gatherings of a quorum are meetings.

PUBLIC BUSINESS

<u>N.D.A.G. 2005-O-15</u>	September 19 2005, to Bismarck City Commission Even though meeting related to public business, there was no quorum of a governing body.
<u>N.D.A.G. 2004-O-08</u>	April 6 2004, to McIntosh County Commission All matters relating to performance of governmental functions or use of public funds.
<u>N.D.A.G. 2004-O-02</u>	January 13 2004, to Renville County Commissioners Risk management training.
<u>N.D.A.G. 2003-O-19</u>	November 12 2003, to Northwood Park Board Social gatherings are not meetings.
<u>N.D.A.G. 98-O-21</u>	September 22 1998, to Wes Tossett and Gary Puppe Communications between board members and supervision of staff.
<u>N.D.A.G. 98-O-16</u>	July 2 1998, to Jeff Schneider Discussion of board members actions.

PUBLIC ENTITY

<u>N.D.A.G. 2005-O-19</u>	November 22 2005, to Supreme Court Gender Fairness Implementation Committee Supreme Court is not a public entity subject to the open meetings law.
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<u>N.D.A.G. 2005-O-02</u>	January 12 2005, to Cass County Historical Society Historical society supported by public funds and recognized by state law is a public entity.
<u>N.D.A.G. 2004-O-14</u>	July 1 2004, to Fargo-Moorhead Chamber of Commerce Chamber of not public entity.
<u>N.D.A.G. 2004-O-10</u>	May 3 2004, to Stutsman County Correctional Center Joint enterprise created by joint powers agreement.
<u>N.D.A.G. 2004-O-04</u>	January 22 2004, to St. Luke's Hospital Private, nonprofit entity may be public entity.
<u>N.D.A.G. 2003-O-08</u>	July 22 2003, to Dakota Center for Independent Living Nonprofit a public entity because it is recognized in state law and is supported by state funds.
<u>N.D.A.G. 2003-O-02</u>	February 21 2003, to James River Senior Citizen's Center Senior citizen's center is a public entity.
<u>N.D.A.G. 2002-O-09</u>	September 17 2002, to Nevin Van de Streek, et al Minot Area Chamber of Commerce Task Force is a public entity.
<u>N.D.A.G. 2002-O-02</u>	February 4 2002, to Birch Burdick and Garrylle Stewart Joint dispatch center.
<u>N.D.A.G. 2001-O-16</u>	November 9 2001, to Roger Johnson Wheat commission nominating committee.
<u>N.D.A.G. 2001-O-11</u>	September 13 2001, to Greg Selbo Economic development corporation is agent of public entity – nine factors.
<u>N.D.A.G. 98-O-23</u>	November 9 1998, to Howard Swanson Recognized by resolution to jointly perform a public function.
<u>N.D.A.G. 98-O-17</u>	July 10 1998, to Barb Siegel Entity recognized by statute.
<u>N.D.A.G. 98-O-04</u>	March 3 1998, to Franklin Appledorn and Norbert Sickler Joint enterprise of counties.
<u>N.D.A.G. 97-O-02</u>	December 22 1997, to Melvin Fischer and Lowell Jensen "Resolution, ordinance, rule, and bylaw" refer to legislative enactments of a public entity.
N.D.A.G. Letter	August 2 1991, to Ken Solberg Government self-insurance pool is an agency of its members and is supported by public funds.
<u>N.D.A.G. 90-04</u>	January 23 1990, to John Olson

	Meetings of state bar board are open; but see Admission to Practice R. 9.
N.D.A.G. Letter	November 20 1987, to Lawrence DuBois Entities created through governmental processes.
N.D.A.G. Letter	July 24 1979, to Wayne Stenehjem Judicial nominating committee is a public entity.
N.D.A.G. Letter	October 12 1977, to Dale Moench State licensing boards.

SCHOOLS

<u>N.D.A.G. 2005-O-21</u>	December 8 2005, to Harvey School Board School board voted on motion in executive session that should have been in open session.
<u>N.D.A.G. 2005-O-14</u>	August 25 2005, to Cando School Board Quorum of school board attends school assembly.
<u>N.D.A.G. 2004-O-21</u>	October 8 2004, to Fort Totten Public School District Executive session must be taped.
<u>N.D.A.G. 2004-O-18</u>	July 16 2004, to Mount Pleasant Public School District Topics at regular school board meeting.
<u>N.D.A.G. 2004-O-15</u>	July 9 2004, to Fargo School District School board finance committee.
<u>N.D.A.G. 2004-O-13</u>	June 28 2004, to Richland Public School District Executive session for collaborative bargaining negotiations.
<u>N.D.A.G. 2004-O-19</u>	April 12 2004, to Halliday Public School District Notice requirements.
<u>N.D.A.G. 2003-O-07</u>	June 5 to Kindred Public School District No. 2
<u>N.D.A.G. 2002-O-07</u>	July 12 2002 (August 13 2002 Addendum), to Kindred Public School District Notice of special meetings to interview and select superintendent.
<u>N.D.A.G. 2000-O-09</u>	July 17 2000, to Ellen Elder Discussion of salary increases.
<u>N.D.A.G. 2000-O-04</u>	March 15 2000, to Larry Gegelman Discussion of FERPA records.
<u>N.D.A.G. 2000-O-01</u>	January 24 2000, to Donna Black Cloud Discussion of vacant superintendent's position and chain of authority.

<u>N.D.A.G. 99-L-112</u>	November 18 1999, to Larry Robinson Cote on disapproval of publication of minutes.
<u>N.D.A.G. 94-F-28</u>	September 2 1994, to Bill Oban Executive session to discuss educational records under FERPA.
N.D.A.G. 82-63	August 20 1982, to Joe Crawford Executive session for nonrenewal of teacher.
N.D.A.G. 78-174	March 15 1978, to Evan Lips Teacher renewal meeting.
N.D.A.G. 67-196	June 19 1967, to A.R. Nestoss Publication and content of minutes.
N.D.A.G. 67-193	April 11 1967, to M.F. Peterson Publication and content of minutes.

TOWNSHIPS

<u>N.D.A.G. 98-O-09</u>	May 7 1998, to Nick Zaharia Meeting of township electors.
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VOTING

<u>N.D.A.G. 2005-O-21</u>	December 8 2005, to Harvey School Board Final action does not include guidance given by members of the governing body to negotiator in executive session.
<u>N.D.A.G. 2005-O-10</u>	June 9 2005, to Wilton Rural Ambulance District Roll call votes must be taken for all nonprocedural matters, even if results are unanimous.
<u>N.D.A.G. 2005-O-07</u>	May 12 2005, to Rolla City Council A decision to make a recommendation to the full council pertained to the merits and should have been by roll call vote.
<u>N.D.A.G. 2005-O-02</u>	January 12 2005, to Cass County Historical Society Roll call votes must be taken on all substantive matters.
<u>N.D.A.G. 2005-O-01</u>	January 10 2005, to City of Napoleon Not all matters brought before a public entity must be voted on.
<u>N.D.A.G. 2004-O-24</u>	November 4 2004, to Southwest Multi-County Correction Center Vote taken during executive session should have been in open session.
<u>N.D.A.G. 2004-O-17</u>	July 16 2004, to Pembina County Fair Board

“Motion carries” is not synonymous with unanimous.

[N.D.A.G. 2001-O-17](#)

December 24 2001, to Ronald Reichert
Motion to convene in executive session is a nonprocedural vote requiring a recorded roll-call.

[N.D.A.G. 2001-O-16](#)

November 9 2001, to Roger Johnson secret ballots.

[N.D.A.G. 2000-O-04](#)

March 15 2000, to Larry Gegelman
Final action following executive session.

[N.D.A.G. 98-O-09](#)

May 7 1998, to Nick Zaharia
Nonprocedural votes.

N.D.A.G. Letter

December 22 1977, to Thomas Jelliff
Use of secret ballots.

N.D.A.G. Letter

November 15 1977, to Wayne Stenehjem and Raymond Holmberg
Use of secret ballots.

Summary of Open Meeting Opinions – By Date Issued

Some of the Attorney General opinions listed in this Appendix may have been superseded in whole or in part by subsequent Attorney General opinions, statutory or rule changes, or court decisions.

1936 - 1979

N.D.A.G. 36-62
March 2, 1936

COUNTIES MINUTES, PUBLICATION

The purpose of the law requiring that the proceedings of a county commission be published is to advise the people of the county of the general disbursements of county funds and official actions of the board of county commissioners acting as fiscal agents of the county. The published proceedings need not necessarily be a verbatim transcript of the minutes of the meetings as written by the county auditor, but may consist of a fair statement of what transpired at each meeting. The resolution fixing the salaries of deputies and clerks should be made a part of the published proceedings of the commissioners when it is adopted, and thereafter when the salaries allowed pursuant to such resolution are paid they need not be mentioned in the commissioners proceedings.

N.D.A.G. 45-68
June 20, 1945

CITIES MINUTES, PUBLICATION

Publication of a complete record of the proceedings of the city council is for the benefit of the public, to apprise them of the actions of the city council and give them a chance to check on its actions. The city council of any city can be compelled to publish its official proceedings. There is no penalty provided for failure to do so, except the general law that makes an officer subject to removal for failing to perform the duties required by law.

N.D.A.G. 46-62
July 25, 1946

COUNTIES MINUTES, PUBLICATION

The board of county commissioners is required to publish a full and complete report of its proceedings. N.D.C.C. § 11-11-37. The undoubted purpose of publishing the proceedings of the county commissioners is for the information of the public concerning their activities and the nature of the claims and items paid and the amounts thereof. This information is important to the public, as all of

the expenditures of the county commissioners in performance of official duty involve the payment of public money. It not only serves as a means of information, but as a deterrent upon public officials in the management and expense involved in official duties. Therefore, the county commissioners should itemize the expenses of an election in its published report of its proceedings.

N.D.A.G. 51-20
January 15, 195

CITIES
MINUTES, PUBLICATION

Based on N.D.C.C. § 40-08-12, it is the duty of the city council to publish a complete record of all of its proceedings in its official newspaper. This does not require a verbatim publication of the minutes of the city auditor, but an analysis of the proceedings which adequately informs the public of the city council's action upon each matter is sufficient.

N.D.A.G. 58-186
November 17, 1958

CITIES
MINUTES, PUBLICATION

Section 40-08-12, N.D.C.C., requires that the minutes of regular and special meetings of a city council be published. Failure to publish the minutes may invalidate action taken at the meeting. It is not necessary that the minutes be published verbatim. The publication should consist of an analysis of the proceedings showing the substantive actions of the council.

N.D.A.G. 67-244
January 4, 1967

GOVERNING BODY

The Faculty Senate of the University of North Dakota, when exercising jurisdiction which has been delegated to it by the State Board of Higher Education, assumes the color of a public body and such meetings must be open to the public. Meetings at which the exercise of such jurisdiction does not take place need not be opened to the public since the group, in such instance, has no color of a public body. Meetings of groups connected with public agencies or institutions or groups assuming quasi public functions should, as a matter of policy, be open to the public except in the most unusual of circumstances.

N.D.A.G. 67-193
April 11, 1967

MINUTES, PUBLICATION
SCHOOLS

If the publication of school board proceedings is approved by the electorate of a school district, a verbatim publication of the minutes is not necessary, but rather an analysis of the proceedings showing the substantive actions of the

council will suffice. Such publication must include an itemized list of obligations approved for payment regardless of the amount of the obligation. The proceedings of all meetings of the school board, regular or special, general or executive, must be published if any formal action is taken at the meeting, with the exception of the executive meeting authorized by N.D.C.C. § 15-47-382. But see N.D.C.C. § 44-04-19.2 final action generally not permitted during executive session

N.D.A.G. 67-196
June 19, 1967

MINUTES, PUBLICATION
SCHOOLS

In those school districts approving the publication of school board minutes, the teachers' salaries cannot be designated under a single heading of "teachers' salaries" in the publication but rather the name of each teacher with that teacher's salary must be itemized in the publication. If the school district publishes the yearly salary of the teacher at the time the contract is signed or at the time the teacher begins his duties, this is sufficient and the monthly salary need not be published each time a check is issued to the teacher. If the salary of any given teacher is altered from that published previously, such facts should be noted in the proceedings of the school board.

N.D.A.G. 69-124
November 28, 1969

COUNTIES
MINUTES, PUBLICATION

Expenditures may not be categorized by grouping of warrant numbers together with the total sum of such vouchers, but expenditures must be itemized in the published proceedings of the board of county commissioners.

N.D.A.G. 72-78
February 23, 1972

COUNTIES
MEETING, DEFINED

County state's attorney's inquests under the existing statutes and in the absence of any regulation promulgated by the Supreme Court are open to the public.

N.D.A.G. Letter
March 5, 1976
to Myron Atkinson

MEETING, DEFINED
OPEN MEETINGS, IN GENERAL

All meetings of public bodies must be open to the public unless a specific statutory or constitutional provision exists which specifies that such meetings may be closed. Deliberations, as well as formal actions, are governed by the open meetings law, and the fact that no formal action is

taken at a gathering of a public body does not exempt such gathering from the open meetings law if matters of concern to the board in the context of its duties and responsibilities are deliberated at such a gathering. The spirit of the open meetings law requires that members of public governing bodies do not contrive artificial settings whereby the open meetings law may be circumvented. Members of a public board not present at a given meeting have a right to be informed about what transpired at that meeting. An active member is not prohibited from contact with those members present for the express and limited purpose of becoming informed regarding what transpired during his absence. Those matters that are past and presumably concluded are proper matters for briefing and information purposes. Those matters that are presently before the board or which may be before the board in the future should be delayed for any type of discussion until such board meets in formal, open session.

N.D.A.G. Letter
July 19, 1977
to Dewel Viker, Jr.

ATTORNEY CONSULTATION OPEN MEETINGS, IN GENERAL

A broad exemption to the open meetings law based on attorney-client privilege is not warranted and any exception based on this relationship should be formulated on a case-by-case basis with detailed facts available. Until otherwise indicated by the Legislature or the courts of North Dakota, the position taken by the Minnesota courts as discussed in the opinion should be followed in North Dakota. Should the state's attorney be one of the parties complained of for violating the open meetings law, the district judge could either appoint an attorney to prosecute for the county or require the Attorney General to do so. See N.D.C.C. §§ 11-16-06, et. seq., 29-21-36, and 54-12-04.

N.D.A.G. Letter
October 12, 1977
to Dale Moench

OPEN MEETINGS, IN GENERAL PUBLIC ENTITY

Any board created by statute and administering a public function, including occupational and professional boards, is a governmental body within the meaning of the open meetings law. All meetings of such boards, except those meetings that are excluded from the requirement, should be open meetings in accordance with N.D.C.C. § 44-04-19.

N.D.A.G. Letter
November 15, 1977
to Wayne Stenehjem

VOTING

While not specifically permitted or prohibited by the open meetings provisions, the use of a secret ballot, except

and Raymond
Holmberg

where specifically authorized, is a diminishment of the open meetings provisions and should not be used. There is a substantial possibility the courts would hold that business conducted by secret ballot is contrary to the open meetings law and therefore void. However, it would also appear the person appointed by secret ballot to fill a vacancy would be considered a de facto officer until and unless a direct challenge to that person's right to hold the office were instituted. But see N.D.C.C. § 44-04-21.

N.D.A.G. Letter
December 22, 1977
to Thomas Jelliff

VOTING

The Attorney General's Office does not approve the use of secret ballots, unless authorized by statute, for any purpose, including the elimination of candidates for appointment to a vacancy even though the final motion to appoint is made by voice vote.

N.D.A.G. 78-174
March 15 1978

EXECUTIVE SESSION, PERSONNEL MATTERS SCHOOLS

Based on amendments to N.D.C.C. § 15-47-38 since the North Dakota Supreme Court decision in Grand Forks School District v. Hennessy, 206 N.W.2d 876 N.D. 1973, the decision whether to renew a teacher's contract must be made in an executive session of the school board unless both the school board and the teacher have agreed that the meeting be open to the public. The school board has the right to continue the executive session from day-to-day. If a recess is declared, it must be to a time and date certain and, upon resumption of the meeting, it is again an executive session unless the parties have agreed that it be open. The recess must be in good faith and not for the purpose of making it difficult for the teacher to have his or her witnesses or representatives present. A school board member who is not present for a portion of the meeting is not excused from voting on the question of whether the teacher's contract should not be renewed.

N.D.A.G. Letter
March 31, 1978
to Burness Reed

OPEN MEETINGS, IN GENERAL

A violation of the open meetings law occurs if a board refuses any person or persons access to any meeting. Considering that a representative of the news media was present, there would appear to be no violation of the open meetings law unless some person was refused access to the noon meeting. The fact that the public, generally, did not have knowledge of that meeting does not alter that conclusion unless the noon meeting was called for the

express purpose of preventing the public from attending. Whether that was the purpose of the meeting is a question of fact and the Attorney General's office is not a fact-finding office. If this meeting had been closed to the public, i.e., if access had been refused to any person or persons, the fact that no decisions were made at the meeting would be immaterial. It would still be a violation of the open meetings statute.

N.D.A.G. Letter
May 3, 1978
to Thomas Clifford

EXECUTIVE SESSION, RECORDS

Section 15-10-172, N.D.C.C., making certain student records confidential, does provide an exception to the open meetings law where confidential records are inherently involved or are being formulated. If the student elects to have a closed meeting, the deliberations of the committee would also be closed although the student and his counsel may be present. If the student waives his or her right to a closed meeting, the student, his or her advisor or attorney, and the public are entitled to be present during the deliberation by the governing body.

N.D.A.G. Letter
July 24, 1979
to Wayne Stenehjem

PUBLIC ENTITY

The Judicial Nominating Committee established by the Governor's executive order is a public body or organization, supported by public funds appropriated by the Legislature to both the executive and judicial branches of state government and it is, therefore, governed by the open meetings law. It follows that the provisions of N.D.C.C. § 44-04-21 apply to the Judicial Nominating Committee with regard to voting by its members.

N.D.A.G. 79-210
November 30, 1979

EXECUTIVE SESSION, RECORDS

Section 12-59-04, N.D.C.C., prohibiting disclosure of certain records, exempts from the open meetings requirement those portions of Parole Board meetings which must by necessity be closed to prevent disclosure of privileged presentence and preparole reports and supervision histories. In determining policies and procedures for the conduct of Parole Board meetings, the board must be keenly aware of the rights of the public.

1980 - 1989

[N.D.A.G. 81-10](#)
February 6, 1981

GOVERNING BODY

The North Dakota Supreme Court, in the case Dickinson

Education Association v. Dickinson Public School District, 252 N.W.2d 205 N.D. 1977, suggests that an entity created in part by a school board is a public body. Therefore, meetings of an advisory arbitration panel selected by a school board and a teachers' organization pursuant to their agreement to assist in teachers' contract negotiations are governed by the state's open meeting laws, i.e., N.D.C.C. §§ 44-04-19 and 44-04-20. Although the news media must make a request for notice of special meetings, the intent of the law is such that consideration should be given to giving news media representatives notice even if they don't request it. But see N.D.C.C. § 44-04-20.6 - notice of special and emergency meetings must be provided to any local media which have requested notification

[N.D.A.G. 81-39](#)

April 13, 1981

HIGHER EDUCATION

Section 15-10-171, N.D.C.C., allowing for executive sessions of the Board of Higher Education for appointment and removal of certain personnel, does not apply to the Commissioner of Higher Education and non-institutional staff members of the Board of Higher Education.

[N.D.A.G. 81-41](#)

April 15, 1981

HIGHER EDUCATION

Under N.D.C.C. § 15-10-17(1), the Board of Higher Education may lawfully meet in executive session to discuss a college president's appointment or removal, but no executive session is authorized by statute to merely engage in a general discussion of a college president's performance.

[N.D.A.G. 82-63](#)

August 20, 1982

EXECUTIVE SESSION,
PERSONNEL MATTERS
SCHOOLS

Information discussed at an executive session of a school board for nonrenewal of a teacher held pursuant to N.D.C.C. § 15-47-38(5) is not confidential for the purpose of unemployment compensation eligibility determinations and appeals. An action for slander or libel may not be predicated upon information discussed at an executive session held pursuant to N.D.C.C. § 15-47-38(5) and furnished by a school board to Job Service for the purposes of unemployment compensation eligibility determinations and appeals.

N.D.A.G. Letter
February 29, 1984

MEETING, DEFINED
OPEN MEETINGS, IN GENERAL

to Richard Schnell

As the Legislature has specifically provided for advance notice of telephone conference call meetings pursuant to N.D.C.C. § 44-04-20, it is clear that the Legislature has approved the use of such conference calls as part of open meetings. However, care should be taken to provide public awareness and knowledge of the conversation taking place over the telephone. As such, members of a governing body may participate in the meeting of that particular governing body by telephone so long as a speakerphone or similar device is used at the place of the meeting enabling all persons to listen and hear the statements made by the member participating by telephone conference call. The use of a speakerphone or similar device will also cause compliance with N.D.C.C. § 44-04-21 regarding public voting.

N.D.A.G. Letter
January 28, 1985
to Wayne Jones

NONGOVERNMENTAL ORGANIZATIONS

The Southeast Crime Conference is covered by the open meetings law only if it can be shown that it is an agency supported in whole or in part by public funds or it is an agency which expends public funds. The fact that members of the Conference travel to its meeting while on duty or receive reimbursement for such traveling is not relevant to the question of whether the meeting is an open meeting. Whether a meeting is covered by the open meetings law is not determined by the attendees of that meeting. Instead, scrutiny is made of the entity which is meeting and its authority for existence as well as the funds which support its existence.

N.D.A.G. Letter
March 29, 1985
to Gail Hagerty

GOVERNING BODY

OPEN MEETINGS, IN GENERAL

Generally, a meeting where a member of a public body meets with other individuals who are not members of the public body is not subject to the open meetings law. To extend the open meetings law to such situations would result in a situation where a meeting of any public official who is a member of any public body would be considered an open meeting despite the fact that the meeting is not one of a public or governmental body and does not otherwise satisfy the open meetings law. To extend the open meetings law to such situations would be unjust and absurd. However, where a public body has delegated authority to a committee or an individual to act on behalf of the public body, such resulting meetings are subject to the open meetings law. (But see N.D.C.C. § 44-04-17.1(6))

(definition of "governing body")

N.D.A.G. Letter May
17, 1985
to Orville Hagen

EXECUTIVE SESSION, RECORDS
LABOR DEPARTMENT

Section 34-05-03, N.D.C.C., prohibiting disclosure of information concerning the business or affairs of any person, provides an exception to the open meetings law under N.D.C.C. § 44-04-19 and therefore wage claim hearings do not have to be open to the public.

N.D.A.G. Letter
December 24, 1985
to Gail Hagerty

COUNTIES
MINUTES, PUBLICATION

Section 11-11-37, N.D.C.C., requires the board of county commissioners to publish in the official newspaper of the county a "full and complete report of its official proceedings" no later than 30 days after the meeting in which the report is read and approved. A fair statement of that which transpired should be included to give the public its needed information regarding how its business is being conducted. Vouchers should not be lumped together but, instead, should be reported separately. This information places the public on notice regarding the specific manner in which its money is being spent and the opportunity to object if it so desires. The same rationale applies to the noting of roll call votes on particular measures which may occur at the meetings of the board of county commissioners. Unless this information is provided to the public, citizens have no way of knowing how their elected representatives voted on a particular issue unless they were able to personally attend the meetings.

N.D.A.G. Letter
April 23, 1986
to Joseph Lamb

EXECUTIVE SESSION, RECORDS

To reconcile the competing requirements of N.D.C.C. § 6-08.1-01(2) and the open records law, discussions of Bank of North Dakota customer loans and any information regarding the financial status of such customers, at Industrial Commission meetings, should be held in closed session. However, a decision with respect to that loan (e.g., extending credit, denying credit, crippling the loan, etc.) should be made in public. Any loans that will be considered in closed session at an Industrial Commission meeting should be listed as part of the Industrial Commission meeting agenda.

N.D.A.G. Letter June
30, 1986

NOTICE OF MEETINGS

Notice of a meeting must contain the date, time, and

to Jack Murphy

location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure or an addition to the agenda at a meeting, does not affect the validity of the meeting or the actions taken at the meeting. The public body's presiding officer has the responsibility of assuring that full notice is given at the same time as the public body's members are notified and that this notice is available to anyone requesting such information. In the event of emergency or special meetings of a public body, the person calling the meeting must notify representatives in the news media, if any, located where the meeting is to be held, and which have requested to be so notified, of the time, place, and date of the emergency meeting, and topics to be considered, at the same time as the public body's members are notified. See N.D.C.C. § 44-04-20.

N.D.A.G. Letter
August 28, 1986
to David Nething

CITIES

OPEN MEETINGS, IN GENERAL

Section 40-08-10, N.D.C.C., provides for the meetings of a city council, but does not discuss the manner in which the meetings are to be held or the various procedural rules which must be adopted. Obviously, the Legislature has left such matters to the discretion of the individual city councils across the state. One statute, N.D.C.C. § 44-04-20, discusses agendas of open meetings of public bodies. That statute indicates that the deviation from an agenda by a governing body is permissible. Where a city has adopted specific rules or has referenced a standard order of rules such as Robert's Rules of Order, with respect to the manner in which its business is to be conducted, business not conducted in compliance with those rules is suspect and may be subject to challenge in terms of its validity. When the state and its statutes are not involved, the Attorney General's office is without sufficient authority to interpret, discuss, or resolve procedural matters involving the city which are governed solely by its own ordinances.

N.D.A.G. Letter
February 12, 1987
to Darrell Farland

OPEN MEETINGS, IN GENERAL

The open meetings law does not discuss the accessibility of the room in which the meeting is being held. The spirit of the open meetings law requires that the room in which the meeting is held be accessible to the general public. To further the spirit of the open meetings law, public entities are encouraged to ensure that their meetings occur in rooms which are generally accessible to the public.

N.D.A.G. Letter
November 20, 1987
to Lawrence DuBois

PUBLIC ENTITY

Entities created through public or governmental process, such as a city's Office of Economic Development, must be considered public or governmental in nature. As such, they are subject to the requirements of the open meetings and open records laws.

N.D.A.G. Letter
January 21, 1988
to Alan Person

EXECUTIVE SESSION, RECORDS

An otherwise open meeting of a public body may become a closed meeting when the body considers information declared by law to be confidential. However, the closed portion of the meeting may continue to occur only so long as the confidential material is being discussed.

N.D.A.G. Letter
March 17, 1989
to Dan Ulmer

GOVERNING BODY

This opinion addresses the applicability of the open meetings law to a committee or "task force" appointed by the Mandan School Board. The applicability of the open meetings law to committees of public bodies depends upon the authority provided to those committees. Where the committee has received a delegation of authority from the parent public body, the committee should be treated as an entity subject to the open meetings law. (But see N.D.C.C. § 44-04-17.1(6) definition of "governing body").

N.D.A.G. Letter
August 10, 1989
to Sparb Collins

EXECUTIVE SESSION, PERSONNEL

The Retirement Board associated with the North Dakota Public Employees Retirement System is a state agency and is subject to the open meetings law. Any meeting the Retirement Board holds for the purpose of conducting interviews of candidates for the position of Executive Director must be open to the public. Additionally, the Retirement Board is unable to refuse access to its meetings by other candidates or any other persons unless such refusal occurs because of a lack of physical space in the meeting room.

N.D.A.G. Letter
September 19, 1989
to Rod Larson

NONGOVERNMENTAL ORGANIZATIONS OPEN MEETINGS, IN GENERAL

If an organization such as the Cass County Historical Society is supported in whole or in part by public funds, it must be open to the public unless a statute specifically provides otherwise. Such an organization may not meet in a session closed to the public unless the Legislature specifically provides otherwise. North Dakota law does not address procedures by which an open meeting is

conducted, such as audience participation, recognition by the chairman of the meeting, approval or disapproval of minutes, and the manner in which the agenda is organized. The Legislature has left it to the particular entity to determine its own rules of procedure.

1990 - 1999

[N.D.A.G. 90-04](#)

January 23, 1990

PUBLIC ENTITY

Meetings of the State Bar Board are required by the North Dakota open meetings law to be open to the public. (But see Rule 9 of the North Dakota Supreme Court's Admission to Practice Rules.)

N.D.A.G. Letter
March 19, 1990

GOVERNING BODY MEETING, DEFINED

This opinion addresses whether the open meetings and open records laws are applicable to the Minot State University Faculty Senate Executive and the Faculty Senate meetings. The applicability of the open meetings law to committees of public bodies is not expressly discussed by statute or the North Dakota constitution. The majority of courts which have considered this issue have concluded that a committee which does not possess decision-making authority and acts only to furnish information, gather facts, or make recommendations to the governing or decision-making body, is not subject to the open meetings law. On the other hand, a committee which does possess decision-making authority is subject to the open meetings law. If the open meetings law applies, the notice and voting requirements of N.D.C.C. §§ 44-04-20 and 44-04-21 apply. (But see N.D.C.C. § 44-04-17.1(6) (definition of "governing body.") The North Dakota Open Records Law is inapplicable to mental or thought processes where no writing has occurred.

N.D.A.G. Letter April
25, 1990
to Corliss Mushik

OPEN MEETINGS, IN GENERAL

North Dakota law does not establish rules of procedure to be followed at meetings of public bodies. The open meeting law does not address who may speak, what topic may be addressed at a meeting, nor the manner in which those meetings are to be conducted. The general rule appears to be that if a public body has not adopted rules of procedure and no statutory rules of procedure are applicable, then generally accepted rules of parliamentary procedure

govern. In determining proper parliamentary procedure, it is possible to resort to Robert's Rules of Order, which is the widely accepted codification of Parliamentary Law. Robert's Rules of Order indicate that, in a situation in which the presiding officer of a public body has not been willing to place an item on the agenda, that item may be raised by a member of the body and discussed at the time of the meeting when new business is discussed.

N.D.A.G. Letter
November 28, 1990
to Jennifer Ring

GOVERNING BODY

Whether the University of North Dakota Student Senate or entities created by the Student Senate (e.g., the Judicial Branch of the Student Senate) are organizations which are supported in whole or in part by public funds or which expend public funds depends, to a large extent, on the factual circumstances involved. The issue of whether the meetings of the Judicial Branch of the Student Senate are open to the public can be resolved by looking to the Student Body Constitution which states that meetings of the Student Senate shall be open.

N.D.A.G. Letter
August 2, 1991
to Ken Solberg

NONGOVERNMENTAL ORGANIZATIONS PUBLIC ENTITY

The North Dakota Supreme Court has adopted a broad interpretation of N.D.C.C. § 44-04-19, favoring open meetings of all bodies conducting government business. The North Dakota Insurance Reserve Fund (NDIRF) is the governing authority of a government self-insurance pool. The governing body of a government self-insurance pool supported by public funds and spending public funds performs a government function. Accordingly, NDIRF is subject to the open meetings and open records laws. When information made confidential under N.D.C.C. § 26.1-23.1-06 is discussed at a meeting which would otherwise be open to the public, that portion of the meeting relating to the confidential information may be closed.

N.D.A.G. Letter
September 19, 1991
to Michael McIntee

ATTORNEY CONSULTATION EXECUTIVE SESSION, PERSONNEL

City council meetings involving the discussion of disciplinary action against the city's chief of police must be open to the public. In addition, discussion of disciplinary action that does not constitute "attorney consultation" as defined in N.D.C.C. § 44-04-19.1 must be open to the public.

N.D.A.G. Letter
December 19, 1991
to Paul Govig

ECONOMIC DEVELOPMENT

That portion of a North Dakota Future Fund meeting at which certain commercial or financial information is discussed may be closed. The Future Fund must disclose upon request all information provided in an application for funding which would not give the applicant's competitors an unfair advantage if disclosed. Information in an application which must be reviewed includes the name of the applicant, its officers and directors, its address, and the nature of its business. Discussion concerning whether investment in an applicant conforms to the Future Fund's statutory distribution, fund diversification, and public policy requirements must be held during that portion of the meeting open to the public. Final action on every application accepted by the Future Fund, including approval, rejection, or a decision not to review the application, must be made by motion at a meeting open to the public. N.D.C.C. § 44-04-18.2. If an application receives approval from the Future Fund, the amount and key provisions of the investment are subject to disclosure. (Section 44-04-18.2, N.D.C.C., has been repealed. See N.D.C.C. § 44-04-19.2.)

[N.D.A.G. 92-08](#)
April 8, 1992

CITIES

MINUTES, PUBLICATION

Section 40-08-12, N.D.C.C., does not apply to the governing body of a city operating under the modern council system of government, therefore, the governing body of a modern council city is not required to publish a record of its proceedings in its official newspaper. A home rule city may not supersede the requirements of N.D.C.C. § 40-08-12 to publish a record of its proceedings in its official newspaper. (But see N.D.C.C. § 40-01-09.1. Section 40-08-12, N.D.C.C., has been repealed.)

[N.D.A.G. 94-F-28](#)
September 2, 1994

EXECUTIVE SESSION, RECORDS

SCHOOLS

If a hearing held by a public school board will create or discuss records that are confidential under the federal Family Educational Rights and Privacy Act (FERPA), at 20 U.S.C.A. § 1232g, the hearing must be closed to the public unless the student's parent or guardian consents in writing to the hearing being open. Only as much of the meeting that is related to confidential records can be closed, and the hearing must be open to the public if the confidentiality of the records is waived by the student's parent or guardian.

[N.D.A.G. 95-L-253](#)
November 8, 1995

ECONOMIC DEVELOPMENT

Sections §§ 10-30.5-07 and 44-04-18.4, N.D.C.C., create exceptions to the open meetings and open records requirements for the North Dakota Development Fund by providing for the confidentiality of certain information. In addition, certain economic development records are exempt from disclosure under N.D.C.C. § 44-04-18.2. (Section 44-04-18.2, N.D.C.C., has been repealed. See amended N.D.C.C. § 44-04-18.4). Absent a statute requiring the records to be open or a statute prohibiting disclosure, the administrator of the agency having custody of the records may exercise discretion in determining whether to disclose an exempt record. Exceptions to the open public meetings and records requirements must be specific and will be narrowly construed. Nevertheless, the term "commercial and financial information" encompasses a broad range of information.

[N.D.A.G. 96-F-09](#)
April 4, 1996

GOVERNING BODY

OPEN MEETINGS, IN GENERAL

Meetings between the mayor and city department heads are generally not subject to the open meetings law unless either the mayor or the department heads have been delegated authority by the city council to perform an act on its behalf. However, the presence of a quorum of city council members at a meeting between the mayor and city department heads regarding city council business constitutes a meeting of the city council under the open meetings law, even if the mayor and other council members merely listen and do not interact or participate in the discussion. The public may make audio or video tape recordings of open city council meetings unless the recording activity would unreasonably disrupt the meeting. That members of the city council may be inhibited, intimidated, or uncomfortable is not sufficient disruption to authorize the city council to limit the recording of its meetings. A meeting is not unreasonably disrupted when members of the public or the media unobtrusively make audio or video recordings of the meeting while sitting in their seats or standing at the back or side of the room.

[N.D.A.G. 96-F-18](#)
September 13, 1996

NONGOVERNMENTAL ORGANIZATIONS

The International Peace Garden, Inc. (Corporation) is both expending public funds directly appropriated by the State Legislature and supported in whole or in part by public funds, and is therefore subject to the open meetings and

records laws. A report on a personnel matter prepared at the direction of the board of directors of the Corporation, whether in the possession of the Corporation or the private investigator who prepared the report, is a record of the Corporation for purposes of the open records law. A meeting of the board of directors of the Corporation to discuss the record, or any other matter, must also be open to the public unless another exception to the open records or meetings laws applies.

[N.D.A.G. 97-O-02](#)

December 22, 1997

GOVERNING BODY

PUBLIC ENTITY

The definition of "governing body" includes the multi-member body responsible for making a collective decision on behalf of a public entity as well as any other group acting collectively pursuant to authority delegated to the group by a governing body. For example, the school district board is the multi-member body responsible for making decisions on behalf of the school district. However, a group such as the Superintendent's Cabinet is not a governing body by delegation if the delegation is made by the superintendent rather than a governing body. The terms "resolution, ordinance, rule [or] bylaw" in the definition of "public entity" refer to enactments by the authority responsible for making binding legislative or policy decisions on behalf of the public entity.

[N.D.A.G. 98-O-01](#)

January 23, 1998

ATTORNEY CONSULTATION

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS

NOTICE OF MEETINGS

Only one exception to the open meetings law needs to apply for a portion of the meeting to be properly closed, but the legal authority for the executive session must be announced before the meeting is closed. To qualify as "attorney consultation," a governing body of a public entity must seek or receive its attorney's advice regarding pending or reasonably predictable litigation. Attorney consultation does not include a simple update on the status of litigation unless the update includes the attorney's mental impression, strategy, or advice regarding the litigation. Emergency or special meetings must be limited to the topics included in the notice and provided to the media, whether or not any of the topics will be discussed in an executive session.

[N.D.A.G. 98-O-02](#)
January 27, 1998

GOVERNING BODY

The Superintendent's Executive Cabinet is not a governing body by delegation because it received its authority from the superintendent rather than from the school board.

[N.D.A.G. 98-O-04](#)
March 3, 1998

MEETING, DEFINED PUBLIC ENTITY

A joint enterprise of several counties to carry out public business on the counties' behalf, such as the Southwest Multi-County Correction Center, is an agency of those counties and therefore falls under the definition of "public entity." Notice of meetings of the governing body of a multi-county agency must be filed in the auditor's office of each participating county. A discussion between one member of a governing body and the executive director of the entity was not a meeting because the discussion did not involve a quorum of the members of the governing body. The disclosure of draft minutes cannot be delayed until the minutes are approved by the governing body. Draft minutes usually must be prepared and made available before the next regular meeting of the governing body.

[N.D.A.G. 98-O-05](#)
March 3, 1998

MEETING, DEFINED

The term "meeting" has four elements: public entity, governing body, public business, and a gathering of a quorum of the members of the governing body. Supervising the employees or other staff of a public entity falls within the public business of the entity, even if delegated to other staff. Social or chance gatherings are not meetings unless public business is considered during the gathering. If public business is considered, the gathering is a meeting even if a meal is served during the meeting. By adopting the quorum rule, the Legislature exempted from the open meetings law most conversations between two or three members of an eight member group, even about public business. However, once those conversations cumulatively involve a quorum (half) of the group's members, it is a meeting. A series of smaller gatherings collectively involving a quorum is a meeting, even if the members did not intend to violate the open meetings law, if the body intentionally met in groups smaller than a quorum and intentionally discussed or received information regarding public business which would have had to occur in an open meeting if any of the smaller gatherings had involved a quorum. Therefore, the series of smaller gatherings held by members of the State Board of Higher Education to discuss a personnel matter was a

meeting. The term "meeting" does not include conversations between the presiding officer of a governing body and the other members of the governing body to identify agenda topics for the next meeting, as long as the substance of those topics is not discussed. Similarly, it is not a meeting for a member of a governing body who was absent from a meeting to contact the other members if the conversations are limited to finding out what happened at the meeting. As a general rule, there is no statutory exception to the open meetings law for personnel matters.

[N.D.A.G. 98-O-06](#)
April 14, 1998

EXECUTIVE SESSION, RECORDS

A school board may hold an executive session under subsection one of N.D.C.C. § 44-04-19.2 to discuss records which are confidential under the Family Educational Rights and Privacy Act (FERPA), 12 U.S.C. § 1232g, but the discussion during the executive session must be limited to a discussion of the confidential records.

[N.D.A.G. 98-F-11](#)
April 30, 1998

COUNTIES

GOVERNING BODY

OPEN MEETINGS, IN GENERAL

The group responsible for filling vacancies on a county commission under N.D.C.C. § 40-02-05 is a governing body and its meetings to interview and discuss the applicants for the vacant position are required to be open to the public. The public's right to attend an open meeting under N.D.C.C. § 44-04-19 does not include the right to participate in that meeting.

[N.D.A.G. 98-O-08](#)
May 4, 1998

MEETING, DEFINED

NOTICE OF MEETINGS

Action need not be taken at a gathering for it to be a meeting, nor is it necessary that the gathering be formally convened as a "meeting." All that is required is that the gathering involve a quorum of the members of a governing body of a public entity and pertain to the public business of the governing body, which includes all stages of the decision-making process.

Notice usually must be provided when the members of the governing body are informed of the meeting. If the attendance of a quorum at a meeting of another body is a surprise, the notice should be provided immediately.

[N.D.A.G. 98-O-09](#)
May 7, 1998

GOVERNING BODY
MINUTES, CONTENT
NOTICE OF MEETINGS
TOWNSHIPS
VOTING

A township is a "public entity" and the township board of supervisors is the governing body for a township. The group of township electors who attend the annual township meeting also is a governing body. Notices must be provided in substantial compliance with N.D.C.C. § 44-04-20 for meetings of township electors and meetings of township supervisors. When a meeting is postponed or rescheduled, a new notice must be prepared for the rescheduled meeting. Minutes are not sufficient when they fail to mention when the meeting was called to order and adjourned, the motions that were made and seconded, and the vote of each member on all recorded roll call votes. Approving bills and an airport abatement are examples of nonprocedural matters which may only be approved by taking a recorded roll call vote.

[N.D.A.G. 98-O-10](#)
May 7, 1998

MEETING, DEFINED
NOTICE OF MEETINGS

The term "meeting" includes the attendance of a quorum of the members of a governing body at a meeting of another group when the group's discussion pertains to the public business of the governing body. A city home rule charter and sales tax are items of city business. Because the attendance of a quorum of the city governing body at a meeting of a community development corporation was a surprise, and providing advance notice of the meeting was not reasonable, the governing body would have been in substantial compliance with N.D.C.C. § 44-04-20 had it prepared a notice and filed it with the appropriate official the day after the meeting. When advance notice of a meeting is not reasonable, the meeting should be recorded, or at least the minutes should be more detailed and should 1) summarize the information received at the meeting and 2) state each member's position on the topics discussed at the meeting, if expressed.

[N.D.A.G. 98-F-12](#)
May 7, 1998

GOVERNING BODY

A director of a state administrative agency, as a single individual, is not a "governing body" for purposes of the open meetings law.

[N.D.A.G. 98-O-11](#)
June 8, 1998

MEETING, DEFINED
NOTICE OF MEETINGS

A water resource district is a political subdivision. The board of a water resource district is the governing body of the district. The term "meeting" includes a gathering at which a governing body requests information from its staff for the body's next meeting or discusses the agenda of the next meeting. Official business need not be transacted for a gathering to be a meeting. Central filing of meeting notices with the county auditor is not required if all the information contained in the notice, including agenda information, was included in an annual schedule already on file with the county auditor, but a notice still must be prepared and posted. Notifying interested members of the public is not a substitute for complying with N.D.C.C. § 44-04-20. Draft minutes of an open meeting are open records and must be available for access and copying upon request.

[N.D.A.G. 98-F-16](#)
June 8, 1998

MEETING, DEFINED

An on-site investigation by a water resource district board of an area which is the subject of a complaint to the board is a meeting. A series of on-site investigations by individual water resource district board members which collectively involve a quorum is not a meeting if the members are investigating the area on their own initiative, but is a meeting if the separate investigations are an organized effort by the board for its members to obtain information about an item of public business.

[N.D.A.G. 98-O-12](#)
June 9, 1998,

ATTORNEY
CONSULTATION
NEGOTIATION STRATEGY SESSIONS

Discussion between a governing body and its attorney regarding a key element in a reasonably predictable civil action was directly related to that action and constituted attorney consultation. Receiving an update by the governing body's attorney on the status of contract negotiations, rather than strategizing or instructing the attorney regarding the negotiation, may not be held in executive session under subsection (7) of N.D.C.C. § 44-04-19.1. There is no specific retention period for recordings of executive sessions. However, the recording should be kept for at least sixty days, and the Office of Attorney General recommends a retention period of six months. (But see N.D.C.C. § 44-04-19.2(5).)

[N.D.A.G. 98-F-103](#)
June 10, 1998

NONGOVERNMENTAL ORGANIZATIONS

An organization receiving public funds under a contract with a state agency is not supported by public funds under N.D.C.C. § 44-04-17.1, even if the contract is entitled "Grant Agreement," as long as the goods or services provided in exchange for those funds are reasonably identified in the agreement and have a fair market value that is equivalent to the amount of public funds it receives, including a commercially reasonable amount of profit for the contractor.

[N.D.A.G. 98-O-13](#)
June 11, 1998

GOVERNING BODY NOTICE OF MEETINGS

A group of the members of a county commission which was appointed by the chairman of the commission to meet with the North Dakota Insurance Reserve Fund was a governing body by delegation. There is no mandatory minimum notice period under N.D.C.C. § 44-04-20. Providing notice may be delegated by the governing body's presiding officer to another official, but the presiding officer remains responsible for ensuring that sufficient notice is provided. A notice which did not identify the time of a meeting or its location within a certain city, and which was posted after the meeting despite the fact it could reasonably have been provided in advance of the meeting, was not in substantial compliance with this N.D.C.C. § 44-04-20. Providing notice of special or emergency meetings to the county's official newspaper is required, even if the newspaper has not asked to receive the notices.

[N.D.A.G. 98-F-22](#)
June 23, 1998

EXECUTIVE SESSION, RECORDS

Administrative hearings by the workers' compensation bureau are generally required to be open to the public, although the medical portion of a hearing may be closed at the request of the claimant. The portion of a hearing during which confidential records are introduced or discussed also must be closed unless the confidentiality is waived.

[N.D.A.G. 98-O-14](#)
June 25, 1998

MINUTES, CONTENT

Meeting minutes must contain a list of topics discussed regarding public business. It is not necessary that minutes reflect the specific discussions or concerns raised by members of the public at a meeting, or between a member of the public and a public official who was reporting to the governing body, as long as the minutes include a list of topics discussed.

[N.D.A.G. 98-O-16](#)
July 2, 1998

OPEN MEETINGS, IN GENERAL
PUBLIC BUSINESS

The definition of public business includes the performance of governmental functions. Thus, the performance of a member of a governing body in his or her official capacity and the effect of the member's actions on the performance of the public entity's governmental functions are items of public business. If a gathering relates to public business, it is a meeting even if no motions are made and no action is taken. Usually, a complete failure to provide public notice of a meeting is a violation of N.D.C.C. § 44-04-20 rather than the open meetings law. However, taking deliberate action to conceal a meeting from the public is functionally the same as closing the door to the meeting and is a violation of the open meetings law as well as N.D.C.C. § 44-04-20.

[N.D.A.G. 98-O-17](#)
July 10, 1998

OPEN MEETINGS, IN GENERAL
PUBLIC ENTITY

The child support guidelines drafting advisory committee is a public entity because it was recognized by state statute to perform the governmental function of reviewing the child support guidelines and serving as an advisory group for the Department of Human Services. The multi-member body responsible for making a decision on behalf of the child support guidelines drafting advisory committee is the committee itself. The open meetings law is violated when a person attempts to attend a meeting but is unable to do so because the door to the meeting room is locked.

[N.D.A.G. 98-F-25](#)
August 11, 1998

COUNTIES
MINUTES, PUBLICATION

A board of county commissioners does not have authority to change or otherwise modify the minutes of a meeting of the board as prepared by the county auditor if the modifications do not correct errors or inaccurate or incomplete information. A court may issue a writ of mandamus if a board of county commissioners fails to read, correct, and approve the minutes of a previous meeting. Publication of minutes that have not been approved by the board of county commissioners does not satisfy the publication requirements of N.D.C.C. § 11-11-37.

[N.D.A.G. 98-O-18](#)
August 11, 1998

MINUTES, CONTENT
MEETING, DEFINED

The minutes of a meeting do not have to identify the location of a meeting, although that information must be

included in the notice of the meeting. The Office of Attorney General will not review the accuracy of meeting minutes, other than to determine whether the minutes meet the minimum requirements of N.D.C.C. § 44-04-21. The term "meeting" includes the attendance of a quorum of the members of a governing body at a meeting of another group when the group's discussion pertains to the public business of the governing body. Thus, attendance by a quorum of the members of a city council at a meeting of the governing body of a different city to listen to presentations by various bidders constituted a meeting of the city council which was required to be preceded by public notice.

[N.D.A.G. 98-L-113](#)

August 25, 1998

COUNTIES

The duty of a county auditor to act as clerk for the board of county commissioners and keep an accurate record of the board's proceedings may be delegated to a deputy auditor, but may not be delegated to a member of the board.

[N.D.A.G. 98-O-21](#)

September 22, 1998

NONGOVERNMENTAL

ORGANIZATIONS

NOTICE OF MEETINGS

PUBLIC BUSINESS

A soil conservation district is a political subdivision and therefore is a public entity. A separately incorporated joint enterprise of soil conservation districts to coordinate their activities is an agency of those districts. The North Dakota Association of Soil Conservation Districts is a public entity because it is an agent of its member districts and because it is recognized by state law to perform the governmental function of managing trust lands which are dedicated to the soil conservation programs of the soil conservation districts. Supervising the employees or other staff of a public entity falls within the public business of the entity, even if delegated to other staff. The relationship and communications between members of a governing body of a public entity in their official capacities also falls within the public business of the entity. As a result, a gathering of the governing body of the entity on those subjects was a meeting. All topics anticipated to be discussed at a regular meeting, including executive sessions, must be included in the notice of the meeting. However, changes to the agenda of a regular meeting are not prohibited, even if made during the meeting.

[N.D.A.G. 98-O-23](#)
November 9, 1998

NONGOVERNMENTAL ORGANIZATIONS PUBLIC ENTITY

An organization is not supported by public funds if the funds received by the organization were paid in exchange for goods or services having an equivalent fair market value. The definition of public funds includes cash and other assets or property which have a significant economic value, including the co-signature of a public entity on a loan by a non-governmental organization or the free use of public property. However, the definition of public funds does not include funds provided from the federal government directly to a non-governmental organization or de minimis contributions of property or assets such as the occasional use of a public meeting room. An organization which receives Community Development Block Grant funds and a loan from a city job development authority is not supported by public funds for purposes of N.D.C.C. § 44-04-17.1 because the funds are provided under authorized economic development programs. A nonprofit corporation recognized in a resolution of a city housing authority as performing the governmental function of developing a new housing development in collaboration with the housing authority is a public entity.

[N.D.A.G. 98-O-25](#)
November 24, 1998

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS

To the extent that minutes are kept of executive sessions, the minutes are not open records because requiring disclosure of the minutes would defeat the legislative purpose of authorizing a closed meeting. The recording of an executive session, and any minutes of the session, continue to be closed records even after the underlying basis for the executive session, such as an attorney consultation regarding pending litigation, no longer applies. The procedural requirements for closing a meeting should not be applied so rigidly that a script needs to be prepared ahead of time in order to comply with those requirements. A meeting is presumed to be legally held and conducted for purposes of N.D.C.C. § 44-04-21.1 when the meeting occurred more than thirty days before an opinion regarding the meeting was requested. An alleged deficiency in the minutes of a meeting cannot be reviewed until after the minutes have been approved by the governing body, because the deficiencies may still be cured by the body prior to adopting the minutes.

[N.D.A.G. 99-O-01](#)
February 22, 1999

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS

The phrase "executive session" includes both a "confidential meeting" and a "closed meeting" as those terms are defined in N.D.C.C. § 44-04-17.1. A "closed meeting" is a meeting or part of a meeting which may either be open or closed to the public. A governing body may admit anyone to a closed meeting whom the body feels is necessary to carry out or further the purposes of the closed meeting. A meeting may not be closed under subsection 7 of N.D.C.C. § 44-04-19.1 simply because a contract is being discussed; the meeting may be closed only if allowing the other party to the negotiation to listen to the discussion would potentially result in increased costs to the public entity.

[N.D.A.G. 99-O-04](#)
April 22, 1999

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
Discussion between a governing body and its attorney is not per se "attorney consultation" for purposes of N.D.C.C. § 44-04-19.1. Attorney consultation does not include a simple update on the status of litigation unless the update includes the attorney's mental impression, strategy, or advice regarding the litigation. The line between a discussion of the status or underlying facts of a pending or reasonably predictable proceeding or litigation and attorney consultation regarding that litigation will frequently be drawn at the point where the public entity's bargaining or litigating position would be adversely affected if the discussion occurred in an open meeting. For example, the attorney consultation exception would not support closing a meeting to meet with the other side to a pending or reasonably predictable litigation or proceeding. Not every remark during an executive session which is irrelevant to the reason for the executive session is a violation of the open meetings law. Before going into executive session, a governing body must announce both the legal authority for the session and the general topics that will be discussed. It is not sufficient that a public entity quote or cite the applicable open meetings exception; the topics must also be announced.

[N.D.A.G. 99-O-05](#)
May 5, 1999

GOVERNING BODY
The phrase "governing body" refers to multi-member groups rather than one individual such as the chairman of a county board of commissioners.

[N.D.A.G. 99-O-06](#)
June 14, 1999

ATTORNEY CONSULTATION
NOTICE OF MEETINGS

The law requiring public notice of all meetings, N.D.C.C. § 44-04-20, does not require a governing body to provide notice to any individual unless the individual has asked for such notice. A proceeding of a state professional licensing board to suspend a person's license is an "adversarial administrative proceeding" for purposes of receiving "attorney consultation" under N.D.C.C. § 44-04-19.1. Discussion between a state licensing board and its attorney about how to respond to the recommendations of an administrative law judge in a pending adversarial administrative proceeding falls within the definition of attorney consultation.

[N.D.A.G. 99-O-07](#)
June 29, 1999

ATTORNEY CONSULTATION
OPEN MEETINGS, IN GENERAL

Discussion between a state licensing board and its attorney to discuss changes to the board's decision in a pending adversarial administrative proceeding following a remand by a district court, and to address a board member's questions about a suggested change, constitutes attorney consultation. It was not a violation of the open meetings law for a professional board to refuse to allow a member of the public to address the board.

[N.D.A.G. 99-O-08](#)
September 9, 1999

NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL

It is a violation of the open meetings law, as well as the public notice requirements in N.D.C.C. § 44-04-20, when a governing body deliberately conceals a meeting from an individual. A person who attends a regular meeting to listen to the governing body's discussion on a particular item or topic of public business, but who leaves the meeting before it adjourns, assumes the risk that the governing body will discuss that item or topic in the person's absence. A governing body does not violate N.D.C.C. § 44-04-20 by discussing a specific topic after the person leaves unless 1) the governing body planned ahead of time to discuss that topic during the regular meeting but did not include the topic in the notice of the meeting, or 2) affirmatively misled or represented to the person that the governing body would not be discussing that topic at the regular meeting.

[N.D.A.G. 99-O-09](#)
November 1, 1999

MEETING, DEFINED
A gathering of a quorum of the members of the county

commission is not a meeting if the meeting did not pertain to the county's public business.

[N.D.A.G. 99-L-112](#)

November 18, 1999

MINUTES, PUBLICATION
SCHOOLS

A vote to disapprove the publication of school board minutes may be taken at a succeeding annual school district election, and not only at the next biennial election.

[N.D.A.G. 99-L-115](#)

November 18, 1999

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS

Each member of a governing body of a public entity has an inherent right to attend all meetings of that body, including executive sessions, unless the subject of the executive session is litigation involving that member. The same is true for access to closed or confidential records of the public entity. A member who was absent from an executive session is entitled to listen to the recording of the session, even though the recording is not open to the public. Allowing an absent member to listen to the recording does not make the recording an open record.

[N.D.A.G. 99-O-10](#)

December 7, 1999

NOTICE OF MEETINGS

There is no mandatory minimum notice period in N.D.C.C. § 44-04-20, but notice of a meeting must be provided to any member of the public who requests it. The notice must be provided at the same time the members of the governing body are notified of the meeting.

2000

[N.D.A.G. 2000-O-01](#)

January 24, 2000

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
SCHOOLS

A governing body's failure to announce the topics it plans to discuss during an executive session, and the legal authority for the executive session, is a violation of N.D.C.C. § 44-04-19.2. A school board's discussion of the need to fill a vacant school superintendent's position and the chain of authority within the school district are topics which may not be discussed in an executive session and must instead be discussed in a meeting which is open to the public.

[N.D.A.G. 2000-O-02](#)
January 31, 2000

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
EXECUTIVE SESSION, RECORDS

For an executive session to discuss confidential records, a vote is not required before going into executive session. However, because a discussion of exempt records does not necessarily have to occur in an executive session, a vote is necessary to determine whether the discussion will occur in an open meeting or in an executive session. When a governing body is discussing confidential records in an executive session, a person who is entitled to have access to those records also is entitled to attend the executive session.

[N.D.A.G. 2000-O-03](#)
January 31, 2000

ATTORNEY CONSULTATION
NOTICE OF MEETINGS

The authority of a township board to close a meeting for "attorney consultation" may be invoked only during a properly noticed open meeting, and not during a separate meeting for which public notice is not provided. Providing notice of a township board meeting to all interested persons is not a substitute for filing a copy of the notice with the county auditor and complying with the other notice requirements in N.D.C.C. § 44-04-20.

[N.D.A.G. 2000-O-04](#)
March 15, 2000

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
EXECUTIVE SESSION, RECORDS
SCHOOLS
VOTING

A discussion of records which are confidential under the Family Education Rights and Privacy Act (FERPA) must be held in an executive session. However, this exception to the open meetings law is limited to the discussion of FERPA records and does not include all discussions regarding specific students. Final action by a school board on a topic discussed during an executive session must occur during the open portion of the meeting, unless final action is otherwise required by law to occur during the executive session. However, in voting during an open meeting to take final action, the school board was not required to reveal closed or confidential information. Instead, the board may refer generally to the subject of the motion without identifying the student or the fact that the vote pertains to student discipline.

[N.D.A.G. 2000-O-05](#)
April 4, 2000

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS

The announcement of an executive session to discuss negotiation strategy was not sufficient when it failed to mention the contracts being discussed and did not occur immediately after a presentation on those contracts during the open portion of the meeting. An executive session is not authorized under this subsection for the purpose of receiving an update or summary from a negotiator on the status of negotiations.

[N.D.A.G. 2000-O-06](#)
May 5, 2000

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
EXECUTIVE SESSION, RECORDS

An announcement of an executive session is not sufficient if a person attending the open portion of the meeting could not identify, from the announcement, the legal basis for the board's executive session. The executive session authorized under N.D.C.C. § 15-47-38.2 is limited to a hearing on a school district's reason for proposing dismissal of a superintendent and does not apply to all discussions about a superintendent by a school board or to consideration of complaints against a superintendent. It is not a violation of the Family Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g(b), to discuss in an open meeting the events a school district employee witnessed or experienced as a school employee. Such discussion does not involve the release of education records.

[N.D.A.G. 2000-O-07](#)
June 26, 2000

ECONOMIC DEVELOPMENT

The portions of a meeting during which the identity, nature, and prospective location of a business or industry which may locate, relocate, or expand within the state are discussed may be held in executive session. A discussion of trade secrets and commercial and financial information provided by a business which has already located, relocated, or expanded within the state (other than the identity of the business) also may be held in executive session, unless the records have been generated by the public entity itself rather than provided by the business. Final approval of a report of the Stark Development Corporation containing the names of current participants in the PACE (partnership in assisting community expansion) program must occur in an open meeting.

[N.D.A.G. 2000-O-08](#)
July 14, 2000

MEETING, DEFINED

For purposes of an opinion issued under N.D.C.C. § 44-04-21.1, this office will not question a school board's assurance that its members did not participate in a series of smaller conversations regarding public business which cumulatively involved a quorum of the governing body.

[N.D.A.G. 2000-O-09](#)
July 17, 2000

NEGOTIATION STRATEGY SESSIONS SCHOOLS

A governing body may not close its evaluation of an employee's job performance as a contract negotiation strategy session simply because the discussion occurs in the context of determining whether to approve a raise or cost of living increase for the employee. A general discussion of the performance of school administrators, rather than a specific discussion of the strengths and weaknesses of the school district's bargaining position with the administrators over a raise and cost of living increase, could not be held in an executive session under N.D.C.C. § 44-04-19.1(7).

[N.D.A.G. 2000-O-10](#)
July 19, 2000

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS NOTICE OF MEETINGS

In describing the topic of an executive session for attorney consultation, in addition to announcing the legal authority for the session, it is not always necessary for a governing body to identify the specific litigation or adversarial administrative proceeding, as long as other information is provided about the topics considered during the executive session. The purpose of requiring all executive sessions to be recorded is to provide a process for citizens to verify that the discussion during an executive session was limited to the announced topics. The purpose of requiring a public announcement of the legal authority and topics of an executive session is to provide the public with a legally sufficient reason for holding the executive session. In contrast with the detail required in an announcement for an executive session, the notice of a meeting during which an executive session for attorney consultation is held only needs to include a general description of the session. The notice does not have to identify the purpose of the executive session or identify the other party to the litigation or proceeding being discussed.

[N.D.A.G. 2000-O-12](#)
October 17, 2000

**ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS**
A school board's announcement of an executive session was sufficient when it indicated the executive session was being held under N.D.C.C. § 44-04-19.1 to receive attorney consultation regarding a pending legal action regarding a specific event. An executive session for attorney consultation regarding a pending criminal action is authorized under N.D.C.C. § 44-04-19.1 even if the school district is not a party to the criminal action, because the district had a legal interest in the case. It was the victim of the crime and a potential plaintiff in a civil action to recover damages resulting from the crime. The right of a government entity in North Dakota to confidentiality in its relationship with its attorney is different from the right of private citizens.

2001

[N.D.A.G. 2001-O-01](#)
February 13, 2001

ECONOMIC DEVELOPMENT
A city council was authorized to hold an executive session with an economic development official under N.D.C.C. § 44-04-18.4 to discuss the city's assistance in recruiting a business to the area served by the city.

[N.D.A.G. 2001-O-03](#)
May 3, 2001

MEETING, DEFINED
Whether a city council met secretly before a regularly scheduled meeting is a question of fact which, in an opinion issued under N.D.C.C. § 44-04-21.1, will be resolved according to the facts alleged by the city council. A pre-meeting discussion involving less than a quorum of the members of the city council is not a "meeting."

[N.D.A.G. 2001-O-04](#)
May 16, 2001

GOVERNING BODY
The definition of "governing body" in N.D.C.C. § 44-04-17.1(6) is not limited to a city council itself; it also includes city committees, like a city franchise committee.

[N.D.A.G. 2001-O-05](#)
June 7, 2001

**MEETING, DEFINED
NOTICE OF MEETINGS**
The definition of "meeting" is not limited to formal gatherings of a governing body and includes a school board retreat. Failing to file a notice of the retreat or post a notice of the retreat at the school is not substantial compliance with the notice requirements in N.D.C.C. § 44-04-20, even if

the date of the retreat was announced at a previous meeting.

[N.D.A.G. 2001-O-07](#)

August 6, 2001

MEETING, DEFINED

NOTICE OF MEETINGS

A city violated N.D.C.C. § 44-04-20 by failing to prepare a written notice of a special meeting. In issuing an opinion under N.D.C.C. § 44-04-21.1, it makes no difference whether a violation was intentional or accidental. A gathering is a “meeting” required to be preceded by public notice even if no final action is taken during the meeting.

[N.D.A.G. 2001-O-08](#)

August 20, 2001

NOTICE OF MEETINGS

A city’s notice of a meeting did not substantially comply with N.D.C.C. § 44-04-20 because it had neglected to appoint an official city newspaper and could not notify its official newspaper of the meeting.

[N.D.A.G. 2001-O-09](#)

August 31, 2001

EXECUTIVE SESSION,

PROCEDURAL REQUIREMENTS

EXECUTIVE SESSION, PERSONNEL MATTERS

A school board’s announcement of an executive session was deficient when it described the topic of the executive session as “personnel issues” but made no effort to identify the legal authority for the executive session. There is no state law that authorizes a school board to hold an executive session to discuss general personnel issues. Beginning on August 1, 2001, a knowing violation of the open records or meetings laws is a crime. For violations occurring within the boundaries of an Indian reservation, the federal government has authority to prosecute such violations.

[N.D.A.G. 2001-O-11](#)

September 13, 2001

ECONOMIC DEVELOPMENT

NONGOVERNMENTAL ORGANIZATIONS

PUBLIC ENTITY

A local economic development corporation is a public entity because it is supported by public funds or it is acting as an agency of government. The total amount of public funds provided to the corporation, coupled with the indistinct terms of the contract dealing with the purposes for which the funds are to be expended, lead to the conclusion that the local economic development corporation is supported by public funds. Public funds are being used to support the organization rather than purchase services. Considering the totality of nine factors, the local economic development

corporation is acting as an agency of government because it receives significant funding from governmental sources, pools those funds with other income of the corporation, and manages a pool of public funds on behalf of several political subdivisions. The definition of “governing body” in N.D.C.C. § 44-04-17.1(6) includes not only the corporation’s board of directors, but also a committee of the board. Since there was no exception that applied to the committee’s consideration of an audit report or discussion of general personnel matters, the corporation violated N.D.C.C. § 44-04-19 by refusing to allow a member of the public to attend the committee’s meeting.

[N.D.A.G. 2001-O-13](#)
September 27, 2001

OPEN MEETINGS, IN GENERAL

It is reasonable to conclude that a meeting which cannot be heard by the public is the equivalent of a closed or secret meeting and would be a violation of N.D.C.C. § 44-04-19.

[N.D.A.G. 2001-O-14](#)
October 4, 2001

MEETING, DEFINED

OPEN MEETINGS, IN GENERAL

The open meetings law does not apply unless there is a gathering or series of smaller gatherings involving a quorum of the members of a governing body. The open meetings law describes how a public entity must conduct its meetings, but does not establish meetings as the exclusive method for a public entity to conduct business. The members of a governing body may communicate with each other in writing without holding a meeting that must be open to the public and preceded by public notice.

[N.D.A.G. 2001-O-15](#)
November 5, 2001

ATTORNEY CONSULTATION

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS GOVERNING BODY

A county social service board is a “governing body” subject to the open meetings law. The use of the phrase “reasonably predictable” in N.D.C.C. § 44-04-19.1 requires more than a simple possibility of litigation or adversarial administrative proceedings. A governing body must show more than a fear or potential of being a party to litigation or an administrative proceeding. The possibility of litigation or a proceeding by or against the governing body must be realistic and tangible. However, a public entity to wait until the moment before a lawsuit or administrative appeal is filed before obtaining its attorney’s advice in an executive session. Viewed in its entirety, the board’s announcement was deficient because, in the absence of a statement that

the attorney consultation pertained to reasonably predictable litigation or proceedings, there was doubt as to the legal authority the board was relying on for the executive session. The board's meeting notice was deficient because it listed "employee relations" and "executive session" as separate agenda items and therefore did not contain a general description of the executive session. The discussion at a regular meeting is not limited to the topics included in the notice of the meeting.

[N.D.A.G. 2001-O-16](#)
November 9, 2001

PUBLIC ENTITY
VOTING

A committee established by statute to nominate three individuals for appointment to the North Dakota Wheat Commission is a public entity and its gathering to select the three individuals is a "meeting" under the state open meetings law. Because the ballots cast by the committee to choose the three nominees were not procedural votes, the committee was required under N.D.C.C. § 44-04-21 to vote by recorded roll call vote rather than by unsigned written ballots.

[N.D.A.G. 2001-F-10](#)
December 11, 2001

EXECUTIVE SESSION, PROCEDURAL
REQUIREMENTS

The requirement that final action be taken during an open meeting does not relieve a governing body of its obligation to refrain from disclosing confidential information to the public. In order to prevent the disclosure of confidential information, a member of a governing body may make a detailed motion in the executive session. The presiding officer may then reconvene in an open session, summarize the motion without disclosing confidential information, and call for a vote.

[N.D.A.G. 2001-O-17](#)
December 24, 2001

EXECUTIVE SESSION,
PERSONNEL MATTERS
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS
VOTING

A motion to hold an executive session is a nonprocedural vote that must be taken by recorded roll call vote. An announcement that an executive session was for "wage negotiation strategy" was sufficient because the phrase "negotiation strategy" identified N.D.C.C. § 44-04-19.1(7) as the legal authority for the session and the term "wage"

indicated the topic of the executive session was the salary increases the City was considering paying its employees. A significant portion of a city council's executive session for negotiation strategy was not authorized because it involved a lengthy discussion of an employee's job performance that went beyond the discussion needed to reach a decision on the salary increases to offer the employee.

[N.D.A.G. 2001-O-18](#)
December 27, 2001

MEETING, DEFINED

A discussion involving only two of the five members of a county social service board did not involve a quorum of a governing body and was not a meeting.

2002

[N.D.A.G. 2002-O-01](#)
January 10, 2002

ATTORNEY CONSULTATION

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS

An announcement that an executive session was being held pursuant to N.D.C.C. § 44-04-19.1 in a specific personnel matter was not a sufficient description of the legal authority for the executive session because that statute authorizes multiple reasons for an executive session. The purpose of the exceptions to the open records and meetings laws in N.D.C.C. § 44-04-19.1 is not to prevent public access to attorney work product or attorney consultation. However, as a practical matter, to effectively conceal a public entity's attorney work product or attorney consultations from its adversary in a pending or reasonably predictable lawsuit or administrative proceeding, that information must be concealed from the public as well. A public entity essentially waives its right to invoke the exceptions to the open records and meetings laws in N.D.C.C. § 44-04-19.1 if the public entity allows its adversary to review the work product or attend the consultation.

[N.D.A.G. 2002-O-02](#)
February 4, 2002

PUBLIC ENTITY

Meetings of the governing body of a dispatch center that was created by a joint powers agreement of several political subdivisions are required to be open to the public unless otherwise specifically provided by law.

[N.D.A.G. 2002-O-07](#)
July 12, 2002 and
August 13, 2002

MEETING, DEFINED

NOTICE OF MEETINGS

SCHOOLS

Addendum

Notice need not be provided when a school board meets for a social gathering and public business is not considered. Notice was not properly provided for special meetings held to interview and select a new superintendent. Sufficient notices of these special meetings were not filed with the county auditor as required by N.D.C.C. § 44-04-20.

[N.D.A.G. 2002-O-09](#)
September 17, 2002

CITIES
ECONOMIC DEVELOPMENT
NONGOVERNMENTAL ORGANIZATIONS
PUBLIC ENTITY

Under N.D.C.C. § 44-04-17.1(12)(c), the Minot Area Chamber of Commerce Task Force (Task Force) is considered a “public entity” because it (1) is supported by public funds from the city of Minot (City) that are not provided in exchange for goods or services having an equivalent fair market value and (2) applying the Schwab factor test, it acted as an agent of the City to encourage the retention and oppose the closure of the Minot Air Force Base, essentially an economic development function of the City. Therefore, the meetings of the Task Force will generally be open to the public. Strategies and plans of the Task Force’s expert consultant relating to base retention activities are protected as trade secrets or commercial information under N.D.C.C. § 44-04-18.4(1). Such information is privileged and, therefore, confidential under N.D.C.C. § 44-04-18.4(1) because release of such information would cause substantial harm to the Task Force and the City in that it would place them at a competitive disadvantage. Therefore, the parts of meetings where this confidential information is discussed will not be open to the public.

[N.D.A.G. 2002-O-10](#)
October 18, 2002

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
ATTORNEY CONSULTATION
NOTICE OF MEETING

The notice, when read as a whole, adequately indicated to the public the general subject matter of the executive session. If a public entity no longer has a main office, the requirement of posting notice at the main office does not apply. It was both reasonable and proper for the county superintendent and the board’s attorney to be present at an executive session given the subject matter of the executive session and their expertise. An executive session held for an attorney consultation under N.D.C.C. § 44-04-19.1(2)

can be for a consultation of legal options regarding a pending administrative proceeding.

[N.D.A.G. 2002-O-11](#)
November 29, 2002

NOTICE OF MEETINGS

A general statement in the notice of a special meeting that “any other issues” that come up will be discussed is not proper. Notices for special or emergency meetings must have a specific list of issues to be discussed. Discussion at the special or emergency meeting is then limited to the issues listed on the notice.

[N.D.A.G. 2002-O-12](#)
December 18, 2002

NOTICE OF MEETING OPEN MEETINGS, IN GENERAL

Notice of a meeting is not required to be published unless there is a specific law requiring the notice to be published, or the entity has decided to publish the notice. N.D.C.C. § 44-04-20(1). This opinion dealt with a state-wide entity that holds meetings in different locations around the state. The fact that the entity discussed a matter that directly affected a town 120 miles from the meeting location did not violate the open meetings law. The open meetings law does not specifically address the proximity of the public entity’s meeting place to the people affected by the entity’s decisions, however, holding a meeting a substantial distance away from the public entity’s jurisdiction could result in the denial of the public’s access to the meeting.

2003

[N.D.A.G. 2003-L-01](#)
January 2, 2003

MEETING DEFINED SCHOOLS

N.D.C.C. § 15.1-09-29 concerning “members present” is intended to define the portion of the total membership of a board needed to transact business. It is not designed to require actual physical presence by all of those persons in the same room at a meeting. Therefore, a school board member may participate in a school board meeting by telephone or video equipment and be included in the number of board members needed to constitute a quorum and the number of votes needed to transact business.

[N.D.A.G. 2003-O-02](#)
February 21, 2003

NONGOVERNMENTAL ORGANIZATIONS PUBLIC ENTITY

James River Senior Citizen’s Center is a public entity

subject to the open meetings law because it receives mill levy money for its general support without a specific contract with the county for specific services to be provided in exchange for the mill levy money. In addition, the Senior Center has the discretion to decide how the mill levy funds are spent within general areas that are outlined in statute. All meetings of the Senior Center regarding discussion items funded all or in part by the mill levy fund are open to the public.

[N.D.A.G. 2003-O-03](#)

February 21, 2003

EXECUTIVE SESSION, PROCEDURAL
OPEN MEETINGS, IN GENERAL
CITIES

There is no law requiring a governing body to announce at a meeting that the open portion of the meeting will reconvene after the executive session is completed. The Attorney General's office encourages governing bodies to estimate when the open meeting will reconvene and announce this to the public, so the public has some idea when they should return for the rest of the meeting.

[N.D.A.G. 2003-O-05](#)

April 11, 2003

CITIES
MEETING, DEFINED

Even without a quorum, the gathering of three members of a seven-member city council at a meeting of another public entity could have been a meeting if the members were acting pursuant to authority delegated to them by the city council. However, since no such delegation was made, it was not a meeting.

[N.D.A.G. 2003-O-07](#)

June 5, 2003

NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL
SCHOOLS

Section 44-04-20 does not provide a process to amend a notice for a special meeting. The school board took appropriate steps by issuing the amended notice as soon as the additional agenda item was requested and by following requirements in N.D.C.C. § 44-04-20(6) when it amended the notice of the special meeting. The meeting agenda for a regular meeting can be amended on the day of the meeting or during the meeting. It is appropriate to explain to the public changes made to the agenda, but there is not legal requirement to do so. The public has the right to access meetings of a governing board, but the access does not give members of the public the right to participate or speak at the public meeting.

[N.D.A.G. 2003-O-08](#)
July 22, 2003

NONGOVERNMENTAL
ORGANIZATIONS
PUBLIC ENTITY
NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL

The Dakota Center for Independent Living is a public entity for purposes of the open records and meetings laws because it is recognized by state law to exercise public authority or perform governmental function. Providing independent living core services and other assistance to the disabled is a governmental function. By the enactment of N.D.C.C. § 50-06.5, the center was recognized by state law. The center receives funding through a legislative appropriation and has discretion on how to spend the funds. Notice of meetings must be given to a member of the public who requests it, at the same time the governing body's members are notified.

[N.D.A.G. 2003-O-12](#)
September 8, 2003

OPEN MEETINGS, IN GENERAL
CITIES

New agenda items not anticipated at the time the agenda was prepared may be added to the agenda during a regular meeting. From the time a regular meeting is convened until the meeting is adjourned, a governing body is free to discuss any item of public business regarding the entity. If members of the public or press leave a meeting before it ends, they do so at their own risk.

[N.D.A.G. 2003-O-13](#)
October 22, 2003

NOTICE OF MEETING
CITIES

Committees of a city council are subject to the same meeting notice requirements as the city council. It was the responsibility of the committee's chairperson to post the notice as soon as the members of the committee were notified. It was a violation of N.D.C.C. § 44-04-20(5) to not notify the public as soon as the committee members knew of the meeting. Unless otherwise provided by law, resolution, or ordinance, or as decided by the public entity, meeting notices need not be published. The purpose of providing the notice to the public entity's official newspaper is not necessarily so it can publish the notice, but instead to notify the newspaper so it can cover the meeting if it desires. Minutes must be taken of committee meetings.

[N.D.A.G. 2003-O-14](#)
October 22, 2003

EXECUTIVE SESSION
ATTORNEY CONSULTATION

The fact that after resigning, the police chief changed his mind and asked to be terminated in order to be eligible for unemployment benefits does not indicate that there is a threat of anticipated litigation or adversarial administrative proceeding. The fact that a public entity has fired someone does not alone create a reasonably predictable threat of litigation or adversarial administrative proceeding. A governing body of a public entity may not close its evaluation of a public employee's job performance under section 44-04-19.1(4) simply because the employee was fired or asked to resign.

[N.D.A.G. 2003-O-15](#)
October 22, 2003

OPEN MEETINGS, IN GENERAL
GOVERNING BODY
EXECUTIVE SESSION, PROCEDURAL
EXECUTIVE SESSION, RECORDS

Committees set up by governing bodies are subject to the open records and meetings law. The two members of the Fargo Airport Authority who viewed the Power-Point presentation constituted a committee and was subject to the open meetings laws and needed to follow the procedures in N.D.C.C. § 44-04-19.2 to go into executive session. No legal authority was announced during the open portion of the meeting that would authorize the executive session to be held. The executive session was not recorded.

[N.D.A.G. 2003-O-16](#)
October 22, 2003

NOTICE OF MEETING

In the event of special or emergency meetings, the public entity must give notice to its official newspaper. N.D.C.C. § 44-04-20(6). However, there is no requirement for state entities, such as WSI, to select an official newspaper. Therefore, there is no statutory requirement for a state entity to send the notice to any newspaper, unless of course, the newspaper requested to receive notice. Because no request from the media was received, WSI was not legally required under N.D.C.C. § 44-04-20(6) to give notice of the meeting. (BUT see N.D.C.C. 44-04-20(6).)

[N.D.A.G. 2003-O-18](#)
November 3, 2003

CITIES
OPEN MEETINGS, IN GENERAL

The Planning and Zoning Committee violated N.D.C.C. § 44-04- 21(2) by failing to take minutes of the June 24, 2003, meeting. Individual committee members going to the

Chairman's office at different times to sign a permit is not a meeting.

[N.D.A.G. 2003-O-19](#)
November 12, 2003

UNREASONABLE DELAY
NOTICE OF MEETING
OPEN RECORDS, IN GENERAL
PUBLIC BUSINESS

A request for records made during a meeting is as valid as a request made at any other time. If the records were not available during the meeting, the board had a duty under the open records law to provide access or copies of the records within a reasonable time after the meeting. The board did not violate N.D.C.C. § 44-04-20 because social gatherings are not meetings under N.D.C.C. § 44-04-17.1(8) as long as public business was not discussed. Placing a meeting announcement of the local community announcement television channel is one way to inform the community of upcoming meetings, however, it does not replace the notice requirements found in N.D.C.C. § 44-4-20.

[N.D.A.G. 2003-O-20](#)
November 13, 2003

NOTICE OF MEETING

Topics to be discussed at a special meeting must be in the notice. By failing to include the topics in the notice, members of the public were prevented from obtaining proper advance notice of the special meeting. The Towner County Commission violated N.D.C.C. § 44-04-20(6) when it failed to notify the official newspaper about a special meeting at the same time as the commission members were notified.

[N.D.A.G. 2003-O-22](#)
December 1, 2003

NOTICE OF MEETING
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS

A citation in a notice to N.D.C.C. § 44-04-19.1 fails to describe the subject matter of the executive session to a member of the public. The announcement in the minutes identified the contract under consideration, but did not refer to "negotiation strategy," "negotiation instruction" or similar language. Using the word "negotiation" in some form would have sufficiently identified N.D.C.C. § 44-04-19.1(7) as the legal authority for the executive session. The purpose of requiring all executive session to be recorded is to provide a process for citizens to verify that the discussion during an executive session was limited to the announced topics. An executive session is permissible only if a governing body is

discussing negotiating strategy or providing negotiation instructions. The law does not allow an executive session for a governing body to receive an update or summary from its negotiator on the status of contract negotiations.

2004

[N.D.A.G. 2004-O-02](#)

January 13, 2004

NOTICE OF MEETING MEETING, DEFINED PUBLIC BUSINESS

Gathering of a quorum of county commissioners to receive training from Workforce Safety and Insurance was “public business” and was therefore a meeting.

[N.D.A.G. 2004-O-04](#)

January 22, 2004

NONGOVERNMENTAL ORGANIZATION PUBLIC ENTITY OPEN MEETING, IN GENERAL

A private, nonprofit entity like the hospital can be a public entity if it is supported, in whole or in part, by public funds, or is expending public funds. N.D.C.C. § 44-04-17.1(9), (12)(c). The hospital receives approximately \$45,000 per year in property tax proceeds from the district which constitutes cash assets with more than minimal value and meets the definition of “public funds.” The more discretion an entity has over how public funds are used, the more likely it is that the funds are for the entity’s general support, rather than for a purchase of goods or services. The hospital has discretion over the use of the funds, the funds are for its general support. Only those portions of the hospital’s board of director’s meetings dealing with the expenditure of district funds are open under the open meetings law.

[N.D.A.G. 2004-O-08](#)

April 6, 2004

NOTICE OF MEETING OPEN MEETINGS, IN GENERAL PUBLIC BUSINESS

It was a meeting when a quorum of the county commission met with the state’s attorney prior to a meeting. It is not relevant that no motions were made and no actions were taken in determining whether the gathering was a meeting subject to open meetings laws. Rather, any discussion or receipt of information regarding public business at a gathering of a quorum of the commission is a meeting under N.D.C.C. § 44-04-17.1(8) that must be properly noticed.

[N.D.A.G. 2004-O-09](#)
April 12, 2004

NOTICE OF MEETING

The fact that the business manager was not available does not excuse the failure to provide notice to the public at the same time the governing body's members are notified. If a public entity finds it necessary to hold an emergency or special meeting, the entity must utilize reasonable means to assure that the public notice, and the notice to anyone requesting this information, is, in fact, reasonably designed to reach the public and those who have requested this information at the same time it is communicated to members of the governing body.

[N.D.A.G. 2004-O-10](#)
May 3, 2004

PUBLIC ENTITY

NOTICE OF MEETING

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS EXECUTIVE SESSION, RECORDS

The Stutsman County Correctional Center is a joint enterprise created by a joint powers agreement of several political subdivisions. In the agreement, the subdivisions delegate a governmental function to the joint enterprise, making it an agency of the subdivisions and therefore subject to the open meetings law as a public entity. The location of a meeting must be listed in an agenda as it is a material item required by law. The governing authority explained that the legal basis for the executive session was attorney consultation to discuss threatened litigation regarding employee classification in open session prior to going into executive session. This sufficiently indicated the topic to be discussed at the executive session and the legal authority for holding the executive session and therefore complied with N.D.C.C. § 44-04-19.2(2)(b). The recording of a closed portion of a meeting is a closed record. The governing authority's executive session was lawful and thus the County Correctional Center did not violate N.D.C.C. § 44-04-18 by refusing to disclose a recording of that session.

[N.D.A.G. 2004-O-12](#)
June 16, 2004

CITIES

GOVERNING BODY MEETING DEFINED

Medora has a five member city council, including the mayor. Since only two of the five members were present at a meeting with a city employee, no quorum was present. Even without a quorum, the gathering of two council members with the complaining city employee could have been a meeting if the members were acting pursuant to

authority delegated to them by the city council. In order for a delegation of authority from a governing body to come under the open meetings law, the delegation must be to a "group of persons."

[N.D.A.G. 2004-O-13](#)

June 28, 2004

NOTICE OF MEETING
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATING STRATEGY SESSIONS
EXECUTIVE SESSION, RECORDS

The notice included "Collaborative Bargaining" as an agenda item, but did not indicate that the collaborative bargaining item would be discussed in an executive session or that it was related to teacher salary negotiation. Notice must have a general description of the subject matter of an executive session sufficient to provide information about the topic or purpose of the session to a member of the public. This phrase "collaborative bargaining strategies" sufficiently identified the legal authority for the executive session. A discussion by the members clearly indicated the collaborative bargaining strategies related to negotiations over teacher salaries. This announcement, supplemented by the member's discussion, sufficiently identified the legal authority for the session and the topic to be discussed. The district was not required to disclose a copy of the tape of the executive session if the discussion in the executive session was limited to the topics announced in the open portion of the meeting.

[N.D.A.G. 2004-O-14](#)

July 1, 2004

PUBLIC ENTITY
NONGOVERNMENTAL ORGANIZATIONS

The Fargo Moorhead Chamber of Commerce is neither supported by public funds, nor an agent of the city of Fargo, therefore the Chamber is not a public entity subject to the open records and meetings laws and therefore is not required to hold meetings that are open to the public.

[N.D.A.G. 2004-O-15](#)

July 9, 2004

SCHOOLS
GOVERNING BODY
OPEN MEETING, IN GENERAL

A committee delegated authority to perform any function, including fact gathering, reporting, or recommending action, as well as taking actions, on behalf of a governing body is subject to the state's open meeting laws, including the requirements to notice its meetings and prepare minutes. A quorum of the board's Finance Committee was present at the meeting. The subject matter of the meeting was within

the scope of responsibilities delegated to the Finance Committee by the board. Therefore, the Finance Committee of the board violated the open meetings law by not providing public notice of the meeting and failing to prepare minutes.

[N.D.A.G. 2004-O-16](#)

July 16, 2004,

CITIES
MINUTES, CONTENT

Section 44-04-21, N.D.C.C., is silent as to if or when minutes may be edited. Therefore, the open meetings law is not violated when individual council members propose edits of the minutes to the auditor. However, other laws govern the extent to which minutes may be edited. Under N.D.C.C. § 40-16-03, it is the city auditor's duty to attend all governing body meetings and to keep complete records of its proceedings. The authority to edit minutes does not authorize the governing body to rewrite or to remove accurate information from the minutes.

[N.D.A.G. 2004-O-17](#)

July 16, 2004

VOTING
OPEN MEETINGS, IN GENERAL

The purpose of N.D.C.C. § 44-04-21 is to make a record of the vote of each member of a governing body for the benefit of those attending the meeting as well as those who are reviewing the minutes of the meeting. Voting by raising hands, rather than taking roll call votes, wrongly assumes that every board member is raising his or her hand in a manner that can be seen by anyone attending the meeting. This also does not take into consideration members of the public who do not attend the meeting and may only read the minutes. "[M]otion carries" is not synonymous with "unanimous." Therefore, a member of the public, reading the minutes, would not know how the board members voted.

[N.D.A.G. 2004-O-18](#)

July 16, 2004

District No. 4
NOTICE OF MEETING
SCHOOLS

Because the board did not expect to discuss the superintendent's nonrenewal at the time the notice was prepared, the school district did not violate N.D.C.C. § 44-04-20 when it considered that topic at its regular meeting.

[N.D.A.G. 2004-O-19](#)

August 10, 2004

NOTICE OF MEETING
EXECUTIVE SESSION, PERSONNEL MATTERS

ATTORNEY CONSULTATION

The notice did not list the location of the meeting or that an executive session was planned. An executive session for "attorney consultation" was authorized because it was reasonable for the council to conclude that there was a tangible threat of litigation when the fired employee stated several times that he was consulting with an attorney and going to appeal his termination. The discussion in the executive session regarding job performance of the terminated employee was improper. There is no exception to the open meetings law for personnel matters.

N.D.A.G. 2004-O-20

September 7, 2004

OPEN RECORDS, IN GENERAL

UNREASONABLE DELAY

FEES FOR ACCESS & COPIES

NOTICE OF MEETING

Notice requirements were violated when notice of the special meeting was not posted in advance, but only handed out to the council members and the media when they arrived at the meeting. It was also a violation to discuss topics at a special meeting that were not included in the notice and agenda. It was a violation of 44-04-19(3) to prohibit a member of the public from videotaping an open meeting.

N.D.A.G. 2004-O-21

October 8, 2004

MINUTES, CONTENT

SCHOOLS

EXECUTIVE SESSION, PERSONNEL MATTERS

EXECUTIVE SESSION, PROCEDURAL MATTERS

The minutes of the executive session reveal the true purpose of the executive session was to discuss a personnel matter. No matter how uncomfortable it might be for a governing body to discuss an employee's job performance in public, there is no exception to the open meetings law for personnel matters. The board violated the law by failing to record the executive session and including in the minutes that the superintendent's alleged improper payment was the general topic discussed during the executive session.

N.D.A.G. 2004-O-22

October 12, 2004

NOTICE OF MEETINGS

EXECUTIVE SESSION, PROCEDURAL MATTERS

The notice for the regular meeting failed to state that there would be an executive session. According to the city attorney, the executive session was not intentionally left off the notice and agenda. Therefore, it was not a violation to

hold an executive session during the regular meeting. The council did not take final action in executive session. Rather, it received advice about the offer and waited to make a final decision in the open meeting by passing a motion to reject the offer.

[N.D.A.G. 2004-O-24](#)
November 4, 2004

ATTORNEYCONSULTATION
NEGOTIATION STRATEGY SESSIONS
VOTING

It was proper to hold an executive session for negotiation strategy when the discussion was limited to negotiating a contract for early retirement, instruction was given to a negotiator, and conducting such a discussion in an open meeting would have revealed financial incentives, thereby hurting the negotiation position of the public entity. There was a realistic and tangible possibility of litigation, justifying an executive session for "attorney consultation," when an employee hired an attorney, the attorney made an offer "in lieu of litigation," and the employee stated that litigation would be forthcoming. During the July 8, 2004 executive session, the discussion stayed within the parameters of attorney consultation and negotiation strategy. However, the board took final action on two motions that should have occurred in the open part of the meeting. After the employee accepted the board's offer, negotiations were complete and there was no longer any reason to hold an executive session based on negotiation strategy.

2005

[N.D.A.G. 2005-O-01](#)
January 10, 2005

CITIES
MINUTES, CONTENT
VOTING
NOTICE OF MEETINGS

A governing body is free to discuss any topic at a regular meeting, as long as the notice of the meeting listed all the topics the governing body expected to discuss when the notice was prepared. All topics discussed at the meeting must be listed in the minutes. Failing to list a topic that was discussed is a violation of N.D.C.C. § 44-04-21(2)(c). Not all matters brought before a public entity must be voted on. Deciding not to revisit an issue that was previously discussed is not a matter that must be voted upon.

[N.D.A.G. 2005-O-02](#)
January 12, 2005

GOVERNING BODY
MEETING, DEFINED
MINUTES, CONTENT
PUBLIC ENTITY
NOTICE OF MEETINGS
VOTING

The Cass County Historical Society is a public entity because it is supported by public funds, it expends public funds, it is recognized by state law as a county historical society, and serves a governmental function of promoting historical work. The board authorized the executive committee to act on its behalf between board meetings. It is therefore a governing body whose meetings regarding public business are subject to the open meetings laws. Meetings may take place by telephone. A meeting involving two members of the three-member executive committee, constituted a meeting of a quorum of the executive committee at which minutes should have been taken. Failure to take a roll call vote, even though there is a record of the result, violates the law.

[N.D.A.G. 2005-O-03](#)
February 8, 2005

CITIES
MEETING, DEFINED
GOVERNING BODY
NEGOTIATION STRATEGY SESSIONS

The Fargo mayor was directed by the city commission to appoint a committee to negotiate a cable contract and report back to the commission. Even though the committee had no binding decision making authority, its gatherings were still meetings subject to the open meetings laws. An entity may not close a meeting on the basis of contract negotiation if the actual negotiations are conducted with the other party. Allowing the party with which the city is negotiating to attend the meeting does not protect the bargaining of the city in its negotiations.

[N.D.A.G. 2005-O-04](#)
February 9, 2005

NOTICE OF MEETINGS
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
ATTORNEY CONSULTATION

The notice of a meeting must contain the location of a meeting even if the location of all meetings is specified in a city ordinance. Date, time, location and general subject matter of any executive session are minimum items required in any notice. The fact that the council could have provided greater detail in the public notice of the executive session subject matter does not mean that it failed to

comply with the minimum requirements. Litigation is reasonably predictable when communications regarding settlement of a possible wrongful termination claim with an ex-employee's attorney have been ongoing for several months.

[N.D.A.G. 2005-L-14](#)

April 29, 2005

MEETINGS, DEFINED
CITIES

A delegation of authority from a governing body must be to more than one person. The commission could legally delegate authority to a single commissioner to attend meetings without violating the open meetings laws.

[N.D.A.G. 2005-O-07](#)

May 12, 2005

CITIES
NOTICE OF MEETINGS
VOTING

Committees created by a public entity's main governing body are subject to notice requirements. Only items listed in the agenda of a special meeting may be discussed at the meeting. The purpose of requiring the notice to be filed with the auditor is to have a central location for people to find out about public meetings affecting the city. Although the city auditor prepared the notice, she did not file it and the requirement to "file" the notice requires something more than its preparation. When the full council attended a committee meeting, sat at the council table, and participated in the discussion, it was a quorum of the full council and should have been noticed as a meeting of the full council. If it was reasonable to suspect beforehand that a quorum might attend the committee meeting, public notice should have been provided when the members learned of the gathering. A decision to recommend to the council that the deputy auditor's position be full-time pertained to the merits of the matter before the committee and a roll call vote should have been taken.

[N.D.A.G. 2005-O-08](#)

May 13, 2005

CITIES
NOTICE OF MEETINGS
MINUTES, CONTENT

There is no mandatory minimum time period for giving notice prior to a meeting. Instead, the notice must be provided to the public and the media at the same time the governing body's members are notified. Failing to list the location of a meeting on the notice is a material omission that violates N.D.C.C. § 44-04-20(6). While minutes may reflect discussions that take place, it is not necessary for

the minutes to do so.

[N.D.A.G. 2005-O-10](#)

June 9, 2005

NOTICE OF MEETINGS

VOTING

MINUTES-CONTENT

When a public entity serves territory in two counties, the board should file meeting notices in the county auditor's office of each participating county. Roll call votes must be taken for every nonprocedural matter, even when the results are typically unanimous. The roll call vote of each member should be reflected in the minutes so that members of the public can determine how an individual board member voted by reading the minutes. It is not clear how board members voted when the minutes say "all agreed" or "motion carried."

[N.D.A.G. 2005-O-14](#)

August 25, 2005

OPEN MEETINGS, IN GENERAL

SCHOOLS

School assemblies, where a quorum of the school board is in attendance, are meetings subject to the open meetings law, even if there is no decision-making or motions made.

[N.D.A.G. 2005-O-15](#)

September 19 2005

CITIES

MEETING, DEFINED

PUBLIC BUSINESS

It was not a meeting of a governing body when a consultant for the city of Bismarck held a meeting with air charter operators. The city commission did not delegate authority to the consultant and the city administrator, who attended the meeting, to conduct the meeting on its behalf. Even though the meeting was related to public business, no quorum of a governing body of a public entity attended the meeting.

[N.D.A.G. 2005-O-17](#)

November 8, 2005

NOTICE OF MEETINGS

COUNTIES

When a county-level governing body establishes a schedule for its regular meetings, it is required to file a copy of the schedule with the county auditor. When a board does not hold regularly scheduled meetings, the board should treat its meetings as emergency or special meetings and provide notice accordingly. The location of a meeting is a material element of the notice, therefore a notice without it does not substantially comply with the requirements of N.D.C.C. § 44-04-20. Topics listed on a meeting notice for a special meeting must be specific. "Old Business" is not specific enough.

[N.D.A.G. 2005-O-18](#)
November 8, 2005

NEGOTIATION STRATEGY
SESSIONS
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
MINUTES, CONTENT
NOTICE OF MEETINGS
CITIES

Notice of a regular meeting was insufficient because it incorrectly described the general subject matter of an executive session by referring to the wrong township and by saying “negotiations” rather than “negotiation strategy” or “negotiating instructions.” When going into executive session under N.D.C.C. § 44-04-19.1(9), using the term “negotiation” in the announcement at the meeting is misleading because a governing body cannot go into executive session to negotiate with another party. A discussion by a governing body in executive session providing authority and instructions to a negotiator is not final action as defined in N.D.C.C. § 44-04-19.2(2)(e). The minutes of the regular meeting at which an executive session was held were insufficient because the minutes failed to identify the members attending the executive session and did not indicate the time it began and ended.

[N.D.A.G. 2005-O-19](#)
November 22, 2005

OPEN MEETINGS, IN GENERAL
PUBLIC ENTITY

The Gender Fairness Committee is a committee created by the North Dakota Supreme Court as a part of its rule making process. Due to the separation of powers doctrine, the open meetings law does not apply to the exclusive functions of the Court. The Court is not a public entity subject to the open meetings law.

[N.D.A.G. 2005-O-21](#)
December 8 2005

NEGOTIATION STRATEGY SESSION
SCHOOLS
VOTING

“Final action” does not include guidance given my members of the governing body to legal counsel or other negotiators in a closed attorney consultation or negotiation preparation session. The first part of the motion made and voted upon in executive session was not “final action” because it was giving the negotiators authority to make a final offer. The second part of the motion authorized the unilateral issuance of contracts and that motion to give authority to unilaterally issue contracts goes beyond negotiation strategy or instruction and should have been made in open session.

2006

[2006-O-01](#)

January 9, 2006

RECORDS
HIGHER EDUCATION
UNREASONABLE DELAY
PUBLIC ENTITY

The North Dakota State University Research Foundation is a public entity subject to the open records law because it acts as an agent of NDSU and performs a governmental function on behalf of the University. It was an unreasonable delay when the Foundation took six months to provide records to the Dakota Resource Council.

[2006-O-02](#)

February 2, 2006

PUBLIC ENTITY
MEETINGS, DEFINED

The Red River Valley Fair Association is a public entity because it recognized by state law to perform a governmental function and it also is supported by public funds. The by-laws of the Fair Association create an "Executive Board" that has the specific authority of planning matters to be considered at the next regular Board meeting. The Executive Board violated the law four times when it met and performed duties that were consistent with the authority given to it under the by-laws.